



US Army Corps  
of Engineers  
Tulsa District

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Toronto Lake  
Kansas

# **Downstream Embankment Slope Repair Project Specifications**

**Note: This is a 100% Set Aside for Small Business Concerns.**

**May 1999**

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## INFORMATION

For information regarding site conditions and the equipment ownership and operating expense schedule contact Tulsa Area Office, 1645 S. 101<sup>st</sup> East Avenue, Tulsa, Oklahoma, telephone 918-669-7565.

For technical information regarding plans and specifications contact Mr. Johnny Bell, Tulsa District Office, Corps of Engineers, Tulsa, Oklahoma, telephone 918 669-7341.

For information regarding bidding procedures, bonds, additional sets of plans and specifications, and lists of plans holders contact Contracting Division, telephone 918 669-7275, Tulsa, Oklahoma.

Collect calls not accepted.

SRW

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# SECTION 00010

<b>SOLICITATION, OFFER AND AWARD</b> <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NO.	2. TYPE OF SOLICITATION	3. DATE ISSUED	PAGE OF PAGES
	DACW56-99-B-0031	<input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	14 MAY 1999	1 of 3

IMPORTANT - The "offer" section on the reverse must be fully completed by the offeror.

4. CONTRACT NO.		5. REQUISITION/PURCHASE REQUEST NO.		6. PROJECT NO.
7. ISSUED BY Department of the Army Corps of Engineers Tulsa District		W44XGQ	8. ADDRESS OFFER TO The Contracting Officer Tulsa District, Corps of Engineers ATTN: Contracting Division PO Box 61 (1645 South 101st East Avenue) Tulsa, OK 74121-0061	
9. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS)		

## SOLICITATION

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying no., date):

DOWNSTREAM EMBANKMENT SLOPE REPAIR  
TORONTO LAKE  
KANSAS

Approximate Value: \$100,000 to \$250,000

Note: This is a 100% Set Aside for Small Business Concerns.

### DIRECTIONS FOR SUBMITTING BIDS:

ENVELOPES CONTAINING BIDS, GUARANTEE, ETC., MUST BE SEALED, MARKED, AND ADDRESSED AS FOLLOWS:

MARK ENVELOPE "BID UNDER SOLICITATION NO. DACW56-99-B-0031 TO BE OPENED AT 2:00P.M. 15 June 1999  
RECEIPT OF AMENDMENTS NOS. \_\_\_\_\_ ACKNOWLEDGED"

ADDRESS BIDS TO: SEE BLOCK 8 ABOVE

HAND-CARRIED BIDS: HAND-CARRIED BIDS PRIOR TO 1:30 P.M. MUST BE DEPOSITED IN THE "BID DEPOSITORY" IN ROOM 130, 1645 SOUTH 101ST EAST AVENUE, TULSA, OK 74128.  
HAND-CARRIED BIDS AFTER 1:30 P.M. MUST BE DEPOSITED IN THE "BID DEPOSITORY" IN ROOM 210 PRIOR TO THE TIME STATED FOR OPENING OF BIDS. (FAR 14.401)

11. The Contractor shall begin performance within 10 calendar days and complete it within \_\_\_\_\_ calendar days after receiving ☐ award  
☒ notice to proceed. This performance period is ☐ mandatory, ☐ negotiable. (\*See Section 00800 - Special Contract Requirements)

12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS  
(If "YES", indicate within how many calendar days after award in item 12B)

☒ Yes ☐ No

12B. CALENDAR DAYS

### 13. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and no copies to perform the work required are due at the place specified in item 8 by 2:00p.m. local time 15 June 1999.

If this is a sealed bid solicitation, offers will be publicly opened at the time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time the offers are due.

B. An offer guarantee is required. **NOTE: Bid guarantee is required with any bid in excess of \$25,000.**

C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.

D. Offers providing less than 60 calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

## OFFER (Must be fully completed by the offeror)

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)

15. TELEPHONE NO. (Include Area Code)

FAX NO.

16. REMITTANCE ADDRESS (Include only if different than Item 14)

CAGE Contractor Established No.

DUNS Contractor Established No.

CODE

FACILITY CODE

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within \_\_\_\_\_ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in item 13D.)

AMOUNTS

&gt;

Set forth in the attached Bidding Schedule

18. The Offeror agrees to furnish any required performance and payment bonds.

## 19. ACKNOWLEDGEMENT OF AMENDMENTS

(The Offeror acknowledges receipt of amendments to the solicitation -- give number and date of each)

AMENDMENT NO.

DATE

20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER

(Type or Print)

20B. SIGNATURE

20C. OFFER DATE

## AWARD (To be completed by Government)

21. ITEMS ACCEPTED:

22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA

24. SUBMIT INVOICES TO ADDRESS SHOWN IN  
(4 copies unless otherwise specified)

&gt;

ITEM

25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO  
☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c)( )

26. ADMINISTERED BY

CODE

27. PAYMENT WILL BE MADE BY

## CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE



28. NEGOTIATED AGREEMENT (Contractor is required to sign this document and return \_\_\_\_\_ copies to issuing Office.) Contractor agrees to furnish and deliver all items or perform all work requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.



29. AWARD ( Contractor is not required to sign this document.) Your offer on this solicitation is hereby accepted as to the items listed. This award consummates the contract, which consist of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or Print)

31A. NAME OF CONTRACTING OFFICER (Type or Print)

30B. SIGNATURE

30C. DATE

31B. UNITED STATES OF AMERICA

31C. AWARD DATE

BY

## BIDDING SCHEDULE

Item No.	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount
1.	Downstream crest repair	1,325	LF	\$___	\$_____
2.	Construction traffic control	Sum	Job	xxx	\$_____
3.	Slope protection repair	1,867	CU YD	\$___	\$_____
TOTAL BID					\$_____

## BIDDING SCHEDULE NOTES

1. All quantities are estimated except where the unit is given as job.
2. Bidders shall bid on all items.
3. SPECIAL BID CONDITIONS.

If a modification to a bid based on unit prices is submitted which provides for a lump-sum adjustment to the total estimated cost, the application of the lump-sum adjustment to each unit price in the Bidding Schedule must be stated. If it is not stated, the bidder agrees that the lump-sum adjustment shall be applied on a pro rata basis to every unit price in the Bidding Schedule.

Only one contract for the entire schedule will be awarded under this solicitation.

### CAUTION TO OFFERORS

All information required by the terms of the Solicitation must be furnished. MISTAKES OR OMISSIONS CAN BE COSTLY. Important items for you to check are included in but not limited to, those listed below. This checklist is furnished only to assist you in submitting a proper offer. Check as you read.

- ( ) Have you acknowledged all amendments?
- ( ) Have you completed the "Representations and Certifications?"
- ( ) Is your offer properly signed?
- ( ) If a bid guarantee is required, is it included with your offer?  
(A late bid guarantee is treated the same as a late offer.)
- ( ) Is your bid guarantee in the proper amount? (Usually 20 percent of total price.)
- ( ) If your bid guarantee is in the form of a bid bond, is the bond properly signed by both the bidder and surety and are all required seals affixed?
- ( ) Is the name in which you submitted the offer the same on your offer as on bid bond?
- ( ) If required, have you entered a unit price in for each bid item?  
(The Solicitation will specifically state when this is necessary.)
- ( ) Are decimals in unit prices in the proper places? Are your figures legible?
- ( ) Are the extensions of your unit prices, and your total price correct?
- ( ) Are all erasures or corrections initialed by the person signing the offer?
- ( ) Have you not restricted your offer by altering the provisions of the Solicitation?
- ( ) Is the envelope containing your offer properly identified that it is a sealed offer and does it contain the correct Solicitation number and bid opening time?

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SECTION 00100

INSTRUCTIONS, CONDITIONS, AND NOTICES TO BIDDERS

1 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at these addresses:

<http://www.arnet.gov/far>  
<http://farsite.hill.af.mil>  
<http://www.dtic.mil/dfars>

(End of provision)

2 52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (APR 1998)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number which identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet Information Services.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information:

- (1) Company name.
- (2) Company address.
- (3) Company telephone number.
- (4) Line of business.
- (5) Chief executive officer/key manager.
- (6) Date the company was started.
- (7) Number of people employed by the company.
- (8) Company affiliation.

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet home page at <http://www.dnb.com/>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at [globalinfo@mail.dnb.com](mailto:globalinfo@mail.dnb.com).

(End of provision)

3 52.214-1 SOLICITATION DEFINITIONS--SEALED BIDDING (JUL 1987)

"Government" means United States Government.

"Offer" means "bid" in sealed bidding.

"Solicitation" means an invitation for bids in sealed bidding.

(End of provision)

4 52.214-3 AMENDMENTS TO INVITATIONS FOR BIDS (DEC 1989)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

5 52.214-4 FALSE STATEMENTS IN BIDS (APR 1984)

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of provision)

(R 2-201(b)(xiii))

(R 1-2.201(a)(11))

6 52.214-5 SUBMISSION OF BIDS (MAR 1997)

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) (1) addressed to the office specified in the solicitation, and (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a) (1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(d) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

(End of provision)

7 52.214-6 EXPLANATION TO PROSPECTIVE BIDDERS (APR 1984)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)  
(R SF 33A, Para 3, 1978 JAN)

8 52.214-7 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS  
(MAY 1997)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it--

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office To Addressee, not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of bids. The term "working days" excludes weekends and U.S. Federal holidays; or

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the

bid wrapper or other documentary evidence of receipt maintained by the installation.

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(g) Bids may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids. If the solicitation authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision entitled "Facsimile Bids." A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(h) If an emergency or unanticipated event interrupts normal Government processes so as to cause postponement of the scheduled bid opening, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the opening date, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(End of provision)

9 52.214-18 PREPARATION OF BIDS--CONSTRUCTION (APR 1984)

(a) Bids must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a bid must initial each erasure or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including--

- (1) Lump sum bidding;
- (2) Alternate prices;
- (3) Units of construction; or
- (4) Any combination of subparagraphs (1) through (3) above.

(c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.

(d) Alternate bids will not be considered unless this solicitation authorizes their submission.

(End of provision)

(R SF 22, Para 5, 1978 FEB)

10 52.214-19 CONTRACT AWARD--SEALED BIDDING--CONSTRUCTION (AUG 1996)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

11 52.215-13 SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall--

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

(End of clause)

12 52.222-23 D NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL  
EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (APR 1984)  
(DEVIATION)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade	Goals for female participaion for each trade
2.3	6.9

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance Programs, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the--

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer's identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is Kansas/Woodson County/Toronto.

(End of provision)

13 52.225-12 I NOTICE OF BUY AMERICAN ACT REQUIREMENT-CONSTRUCTION MATERIALS  
(MAY 1997)--ALTERNATE I (MAY 1997)

(a) Offerors are required to comply with the requirements of Federal Acquisition Regulation (FAR) clause 52.225-5, Buy American Act Construction Materials, of this solicitation. The terms "construction material" and "domestic construction material," as used in this provision, have the meanings set forth in FAR clause 52.225-5.

(b) An offeror requesting a determination regarding the inapplicability of the Buy American Act shall submit such request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-5.

(c) Evaluation of offers.

(1) For evaluation of offers, (unless agency regulations specify a higher percentage) the Government will add to the offered price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American Act based on claimed unreasonable cost of domestic construction materials in accordance with paragraph (b)(3)(i) of FAR clause 52.225-5.

(2) If the evaluation of offers results in a tie between an offer including such foreign construction material excepted on the basis of unreasonable cost, as evaluated, and an offer including solely domestic construction material or other foreign construction material listed in the solicitation at paragraph (b)(2) of FAR clause 52.225-5, or subsequently excepted in accordance with paragraphs (b)(3) (ii) or (iii) of FAR clause 52.225-5, award shall be made to the offeror that submitted the latter offer.

(d) Alternate offers.

(1) When an offer includes foreign construction material not listed by the Government in the solicitation at paragraph (b)(2) of FAR clause 52.225-5, offerors also may submit alternate offers based on use of equivalent domestic construction material.

(2) If alternate offers are submitted, a separate Standard Form 1442 shall be submitted for each alternate offer, and a separate price comparison table, prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-5, shall be submitted for each offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception to apply.

(3) If the Government determines that a particular exception requested under paragraph (c) of FAR clause 52.225-5 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material.

(i) In sealed bid procurements, any offer based on use of that particular foreign construction material shall be rejected as nonresponsive.

(ii) In negotiated procurements, any offer based on use of that particular foreign construction material may not be accepted unless revised during negotiations.

(End of provision)

14 52.228-1 BID GUARANTEE (SEP 1996)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds, (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(c) The amount of the bid guarantee shall be 20 percent of the bid price or three million dollars (\$3,000,000) , whichever is less.

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

(End of provision)

15 52.228-14 IRREVOCABLE LETTER OF CREDIT (OCT 1997)

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and--

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer



provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Miller Act, the later of--

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of--

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

(Issuing Financial Institution's Letterhead or Name and Address)

Issue Date\_\_\_\_\_

Irrevocable Letter of Credit No.\_\_\_\_\_

Account party's name\_\_\_\_\_

Account party's address\_\_\_\_\_

For Solicitation No.\_\_\_\_\_

(For reference only)

TO: (U.S. Government agency)

(U.S. Government agency's address)

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$\_\_\_\_\_. This Letter of Credit is payable at (issuing financial institution's and, if any, confirming financial institution's) office at (issuing financial institution's address and, if any, confirming financial institution's address) and expires with our close of business on \_\_\_\_\_, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. (This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.) It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future

expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ (state of confirming financial institution, if any, otherwise state of issuing financial institution).

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

(Issuing financial institution)

(f) The following format shall be used by the financial institution to confirm an ILC:

(Confirming Financial Institution's Letterhead or Name and Address)

Date \_\_\_\_\_ 19\_\_\_\_\_

Our Letter of Credit Advice Number \_\_\_\_\_

Beneficiary: \_\_\_\_\_

(U.S. Government agency)

Issuing Financial Institution: \_\_\_\_\_

Issuing Financial Institution's LC No.: \_\_\_\_\_

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by \_\_\_\_\_ (name of issuing financial institution) for drawings of up to United States dollars \_\_\_\_\_/U.S. \$\_\_\_\_\_ and expiring with our close of business on \_\_\_\_\_ (the expiration date), or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at \_\_\_\_\_.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. (This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.) It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of

delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ (state of confirming financial institution).

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

(Confirming financial institution)

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

\_\_\_\_\_  
(City, State)

\_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Name and address of financial institution)

Pay to the order of \_\_\_\_\_

(Beneficiary Agency)

the sum of United States \$ \_\_\_\_\_

This draft is drawn under \_\_\_\_\_

Irrevocable Letter of Credit No. \_\_\_\_\_

By: \_\_\_\_\_

(Beneficiary Agency)

(End of clause)

16 52.228-15 Performance and Payment Bonds--Construction (SEP 1996)

(a) Definitions. As used in this clause--

Contract price means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or for indefinite-delivery type contracts, the price payable for the specified minimum quantity.

(b) Unless the resulting contract price is \$100,000 or less, the successful offeror shall be required to furnish performance and payment bonds to the Contracting Officer as follows:

(1) Performance Bonds (Standard Form 25):

(i) The penal amount of performance bonds shall be 100 percent of the original contract price.

(ii) The Government may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.

(iii) The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(2) Payment Bonds (Standard Form 25-A):

(i) The penal amount of payment bonds shall equal--

(A) 50 percent of the contract price if the contract price is not more than \$1 million;

(B) 40 percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(C) \$2.5 million if the contract price is more than \$5 million.

(ii) If the original contract price is \$5 million or less, the Government may require additional protection if the contract price is increased. The penal amount of the total protection shall meet the requirement of subparagraph (b)(2)(i) of this clause.

(iii) The Government may secure additional protection by directing the Contractor to increase the penal sum of the existing bond or to obtain an additional bond.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register, or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW., 2nd Floor, West Wing, Washington, DC 20227.

(End of clause)

17 52.233-2 SERVICE OF PROTEST (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from

R.L. Hedrick

Chief, Contracting Division

P.O. Box 61

Tulsa, OK 74121-0061

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

18 52.236-27 SITE VISIT (CONSTRUCTION) (FEB 1995)

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigation and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly,

offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) Site visits may be arranged during normal duty hours by contacting:  
Name: Johnny Bell, Technical Manager Address: 1645 S. 101st E. Avenue  
Tulsa, OK 74128 Telephone: 918/669-7341  
(End of provision)

19 52.204-7001 COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING  
(DEC 1991)

(a) The Offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code entered must be for that name and address. Enter CAGE before the number.

(b) If the Offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics Services Center (DLSC). The Contracting Officer will--

(1) Ask the Contractor to complete section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;

(2) Complete section A and forward the form to DLSC; and

(3) Notify the Contractor of its assigned CAGE code.

(c) Do not delay submission of the offer pending receipt of a CAGE code.  
(End of provision)

20 52.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION (MAR 1998)

(a) Definitions. As used in this clause--

(1) "Central Contractor Registration (CCR) database" means the primary DoD repository for contractor information required for the conduct of business with DoD.

(2) "Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) "Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) "Registered in the CCR database" means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting

Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at <http://ccr.edi.disa.mil>.

(End of clause)

21 52.0-4010 SMALL BUSINESS SIZE STANDARD (APR 1984) FAR 19.102

The size standard of Small Business Concerns for this procurement is a concern whose average annual sales or receipts for its preceding three fiscal years does not exceed \$17 million. Standard Industrial Classification (SIC): 1629.

(End of Clause)

22 52.0-4018 ARITHMETIC DISCREPANCIES (EFARS 52.214-5000) (MAR 1995)

(a) For the purpose of initial evaluation of bids, the following will be utilized in resolving arithmetic discrepancies found on the face of the bidding schedule as submitted by bidders:

(1) Obviously misplaced decimal points will be corrected;

(2) Discrepancy between unit price and extended price, the unit price will govern;

(3) Apparent errors in extension of unit prices will be corrected; and

(4) Apparent errors in addition of lump-sum and extended prices will be corrected.

(b) For the purpose of bid evaluation, the Government will proceed on the assumption that the bidder intends his bid to be evaluated on the basis of the unit prices, the totals arrived at by resolution of arithmetic discrepancies as provided above and the bid will be so reflected on the abstract of bids.

(c) These correction procedures shall not be used to resolve any ambiguity concerning which bid is low.

23 52.0-4023 BIDDER'S QUALIFICATIONS (APR 1984) (FAR 9.1)

Before a bid is considered for award, the bidder may be requested by the Government to submit a statement regarding his previous experience in performing comparable work, his business and technical organization, financial resources, and plant available to be used in performing the work.

24 52.0-4025 PERFORMANCE OF WORK BY CONTRACTOR

Unless he has submitted such description with his bid, the successful bidder must furnish the Contracting Officer within 14 calendar days after award a description of the work which he intends to perform with his own organization (e.g., earthwork, paving, brickwork, or roofing), the percentage of the total work this represents, and the estimated cost thereof. (See Section 00800 clause entitled "Performance of Work by Contractor.")

25 52.0-4045 REQUIRED BID BOND AMOUNT

Each bidder shall submit with his bid a Bid Bond (Standard Form 24) with good and sufficient surety or sureties acceptable to the Government, or other security as provided in FAR Clause 52.228-0001, Bid Guarantee, contained elsewhere in this solicitation, in the form of twenty (20) percent of the bid price or three million dollars (\$3,000,000) whichever is lesser. The bid bond penalty may be expressed in terms of a percentage of the bid price or may be expressed in dollars and cents.

(End of Clause)

END OF SECTION 00100

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SECTION 00600

REPRESENTATIONS & CERTIFICATIONS

1 52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(a) The offeror certifies that--

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory--

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above \_\_\_\_\_

(insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of provision)

2 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

3 52.204-3 TAXPAYER IDENTIFICATION (OCT 1998)

(a) Definitions.

Common parent, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report

on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) Taxpayer Identification Number (TIN).

☐ TIN: \_\_\_\_\_

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

☐ Sole proprietorship;

☐ Partnership;

☐ Corporate entity (not tax-exempt);

☐ Corporate entity (tax-exempt);

☐ Government entity (Federal, State, or local);

☐ Foreign government;

☐ International organization per 26 CFR 1.6049-4;

☐ Other \_\_\_\_\_

(f) Common parent.

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

☐ Name and TIN of common parent:

Name \_\_\_\_\_

TIN \_\_\_\_\_

(End of provision)

4 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED  
DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (MAR 1996)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that--

(i) The Offeror and/or any of its Principals--

(A) Are / / are not / / presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have / / have not / /, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are / / are not / / presently indicted for, or otherwise

criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has / / has not / /, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

5 52.219-1 II SMALL BUSINESS PROGRAM REPRESENTATIONS (MAY 1999)--ALTERNATE II (JAN 1999)

(a)(1) The standard industrial classification (SIC) code for this acquisition is 1629

(2) The small business size standard is 17 Million

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) Representations. (1) The offeror represents as part of its offer that it [ ] is, [ ] is not a small business concern.

(2) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror

represents, for general statistical purposes, that it [ ] is, [ ] is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents as part of its offer that it [ ] is, [ ] is not a women-owned small business concern.

(4) (Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision). [The offeror shall check the category in which its ownership falls]:

\_\_\_\_Black American.

\_\_\_\_Hispanic American.

\_\_\_\_Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

\_\_\_\_Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

\_\_\_\_Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

\_\_\_\_Individual/concern, other than one of the preceding.

(5) [Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that--

(i) It \_\_\_\_\_ is, \_\_\_\_\_ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It \_\_\_\_\_ is, \_\_\_\_\_ is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(5)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(c) Definitions.

"Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

"Women-owned small business concern," as used in this provision, means a small business concern--

(1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of

which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Notice. (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

6 52.219-19 SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (JAN 1997)

(a) Definition.

"Emerging small business" as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

(b) (Complete only if the Offeror has represented itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.)

The Offeror [ ] is, [ ] is not an emerging small business.

(c) (Complete only if the Offeror is a small business or an emerging small business, indicating its size range.)

Offeror's number of employees for the past 12 months (check this column if size standard stated in solicitation is expressed in terms of number of employees) or Offeror's average annual gross revenue for the last 3 fiscal years (check this column if size standard stated in solicitation is expressed in terms of annual receipts). (Check one of the following.)

No. of Employees	Avg. Annual Gross Revenues
___ 50 or fewer	___ \$1 million or less
___ 51-100	___ \$1,000,001-\$2 million
___ 101-250	___ \$2,000,001-\$3.5 million
___ 251-500	___ \$3,500,001-\$5 million
___ 501-750	___ \$5,000,001-\$10 million
___ 751-1,000	___ \$10,000,001-\$17 million
___ Over 1,000	___ Over \$17 million

(End of provision)

7 52.222-21 D PROHIBITION OF SEGREGATED FACILITIES (APR 1984) (DEVIATION)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex or national origin because of written or oral policies, or employee custom. The term does not include separate or single-user rest rooms and necessary dressing or sleeping areas, which shall be provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract that contains the clause of this contract entitled "Equal Opportunity."  
(End of clause)

8 52.222-22 D PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (APR 1984)  
(DEVIATION)

The offeror represents that--

(a) It /\_/ has, /\_/ has not, participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation.

(b) It /\_/ has, /\_/ has not filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

9 52.223-1 CLEAN AIR AND WATER CERTIFICATION (APR 1984)

The Offeror certifies that--

(a) Any facility to be used in the performance of this proposed contract is /\_/ is not /\_/ listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

(b) The Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the EPA, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(c) The Offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

(End of provision)  
(AV 7-2003.71 1977 JUN)  
(AV 1-1.2302-1)

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The Offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material	Identification No.
(If none, insert None)	


(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful Offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful Offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful Offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material;



and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or data acquired from other sources.

(End of clause)

11 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 1996)

(a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

(b) By signing this offer, the offeror certifies that----

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: (Check each block that is applicable.)

/\_\_\_/ (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

/\_\_\_/ (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

/\_\_\_/ (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

/\_\_\_/ (iv) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in Section 19.102 of the Federal Acquisition Regulation; or

/\_\_\_/ (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(End of provision)

12 52.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A  
TERRORIST COUNTRY (MAR 1998)

(a) Definitions.

As used in this provision--

(1) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) "Significant interest" means--

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) Prohibition on award. In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) Disclosure.

If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include--

(1) Identification of each government holding a significant interest;  
and

(2) A description of the significant interest held by each government.  
(End of provision)

13 52.209-7002 DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT  
(SEP 1994)

(a) Definitions.

As used in this provision--

(1) Effectively owned or controlled means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the

election, appointment, or tenure of the Offeror's officers or a majority of the Offeror's board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) Entity controlled by a foreign government--

(i) Means--

(A) Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; or

(B) Any individual acting on behalf of a foreign government.

(ii) Does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(3) Foreign government includes the state and the government of any country (other than the United States and its possessions and trust territories) as well as any political subdivision, agency, or instrumentality thereof.

(4) "Proscribed information" means--

(i) Top Secret information;

(ii) Communications Security (COMSEC) information, except classified keys used to operate secure telephone units (STU IIIs);

(iii) Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;

(iv) Special Access Program (SAP) information; or

(v) Sensitive Compartmented Information (SCI).

(b) Prohibition on award.

No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Secretary of Defense or a designee has waived application of 10 U.S.C. 2536(a).

(c) Disclosure.

The Offeror shall disclose any interest a foreign government has in the Offeror when that interest constitutes control by a foreign government as defined in this provision. If the Offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the Offeror's immediate parent, intermediate parents, and the ultimate parent. Use separate paper as needed, and provide the information in the following format:

Offeror's Point of Contact for Questions about Disclosure	
(Name and Phone Number with Country Code, City Code and Area Code, as applicable)	
Name and Address of Offeror	
Name and Address of Entity	Description of Interest,
Controlled by a Foreign	Ownership Percentage, and
Government	Identification of Foreign
	Government

(End of provision)

14 52.225-7031 SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 1992)

(a) Definitions.

As used in this clause--

(1) "Foreign person" means any person other than a United States person as defined in section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

(2) "United States person" is defined in section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) Certification.

By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it--

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking.

(End of clause)

15 52.247-7022 REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term "supplies" is defined in the Transportation of Supplies by Sea clause of this solicitation.

(b) Representation. The Offeror represents that it--

\_\_\_\_\_ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

\_\_\_\_\_ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.

(End of provision)

END OF SECTION 00600

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SECTION 00700

CONTRACT CLAUSES

1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

<http://www.arnet.gov/far>  
<http://farsite.hill.af.mil>  
<http://www.dtic.mil/dfars>  
(End of clause)

2 52.203-9 reserved  
(Reference )

3 52.202-1 DEFINITIONS (OCT 1995)

(a) "Head of the agency" (also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) Commercial component means any component that is a commercial item.

(c) Commercial item means--

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that--

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for--

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements.

"Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values

and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services--

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) Component means any item supplied to the Federal Government as part of an end item or of another component.

(e) Nondevelopmental item means--

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.

(f) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)

4 52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 7-104.16 1952 MAR)

5 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)  
(R 7-103.20 1958 JAN)  
(R 1-1.503)  
(R 1-7.102-18)

6 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT  
(JUL 1995)

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000.

(End of clause)

7 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime

contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from--

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

(End of clause)

8      52.203-8                      CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR  
IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(End of clause)

9 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY  
(JAN 1997)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the

incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

10 52.203-12            LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL  
TRANSACTIONS (JUN 1997)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

(1) The awarding of any Federal contract.

(2) The making of any Federal grant.

(3) The making of any Federal loan.

(4) The entering into of any cooperative agreement.

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(3) A special Government employee, as defined in section 202, title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee



received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or

modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the

information reported includes--

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

11 52.204-4 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (JUN 1996)

(a) In accordance with Executive Order 12873, dated October 20, 1993, as amended by Executive Order 12995, dated March 25, 1996, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent postconsumer material.

(b) The 20 percent standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, and other uncoated printed and writing paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent postconsumer material standard is 50 percent recovered material content of certain industrial by-products.

(End of clause)

12 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH  
CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT  
(JUL 1995)

(a) The Government suspends or debar Contractors to protect the Government's interest. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)

13 52.211-18 VARIATION IN ESTIMATED QUANTITY (APR 1984)

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified.

(End of clause)

14 52.214-26 AUDIT AND RECORDS--SEALED BIDDING (OCT 1997)

(a) As used in this clause, records includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to--

- (1) The proposal for the modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the modification; or
- (4) Performance of the modification.

(c) Comptroller General. In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause.

(d) Availability. The Contractor shall make available at its office at all reasonable times the materials described in reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of cost or pricing data.

(End of clause)

15 52.214-27 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--  
MODIFICATIONS--SEALED BIDDING (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at FAR 15.403-4(a)(1), except that this clause does not apply to a modification if an exception under FAR 15.403-1(b) applies.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its

Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) above.

(c) Any reduction in the contract price under paragraph (b) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if--

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the

modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

16 52.214-28 SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS--SEALED BIDDING (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1), and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1(b) applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1).

(End of clause)

17 52.214-29 ORDER OF PRECEDENCE--SEALED BIDDING (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

(End of clause)

(a) It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) Definitions. As used in this contract

(1) Small business concern means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(3) Small business concern owned and controlled by socially and economically disadvantaged individuals means a small business concern that represents, as part of its offer, that it meets the definition of a small disadvantaged business concern in 13 CFR 124.1002.

(4) Small business concern owned and controlled by women means a small business concern--

(i) Which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women; and

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.

(End of clause)

(a) This clause does not apply to small business concerns.



(b) Definitions. As used in this clause--

Commercial item means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

Individual contract plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master plans means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of--

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to HUBZone small business concerns;

(iv) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(v) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to--

(i) Small business concerns;

(ii) HUBZone small business concerns;

(iii) Small disadvantaged business concerns; and

(iv) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), the list of certified small disadvantaged business concerns of the SBA, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone small, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small and women-owned small business source list. A firm shall rely on the information contained in SBA's list of small disadvantaged business concerns as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small disadvantaged business source list. Use of PRO-Net and/or the SBA list of small disadvantaged business concerns as its source lists does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with--

(i) Small business concerns;

(ii) HUBZone small business concerns;

(iii) Small disadvantaged business concerns; and

(iv) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any

public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will--

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms or as provided in agency regulations and in paragraph (j) of this clause; and

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating--

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether HUBZone small business concerns were solicited and, if not, why not;

(C) Whether small disadvantaged business concerns were solicited and, if not, why not;

(D) Whether women-owned small business concerns were solicited and, if not, why not; and

(E) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact--

(A) Trade associations;

(B) Business development organizations; and

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources.

(v) Records of internal guidance and encouragement provided to buyers through--

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided--(1) the master plan has been approved, (2) the offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers

subcontract award data related to this contract. This report is not required for commercial plans.

(2) Standard Form 295, Summary Subcontract Report. This report encompasses all the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by Standard Industrial Classification (SIC) Major Group. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant SIC Major Group and report all awards to that subcontractor under its predominant SIC Major Group.

(End of clause)

20 52.219-14 LIMITATIONS ON SUBCONTRACTING (DEC 1996)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for--

(1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of clause)

21 52.219-16 LIQUIDATED DAMAGES--SUBCONTRACTING PLAN (JAN 1999)

(a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a

commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

22 52.222-3 CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

(a)(1) The worker is paid or is in an approved work training program on

a voluntary basis;

(2) Representatives of local union central bodies or similar labor union organizations have been consulted;

(3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

23 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME  
COMPENSATION (JUL 1995)

(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payrolls and basic records. (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of

contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts exceeding \$100,000, the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

(End of clause)

24 52.222-6 DAVIS-BACON ACT (FEB 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times



by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(iv) With respect to helpers, such a classification prevails in the area in which the work is performed.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary

of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

25 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

26 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting

Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify--

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)

27 52.222-9 APPRENTICES AND TRAINEES (FEB 1988)

(a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed

pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage

rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(End of clause)

28 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(End of clause)

29 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination--Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(End of clause)

30 52.222-12 CONTRACT TERMINATION--DEBARMENT (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

(End of clause)

31 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

(End of clause)

32 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees of their representatives.

(End of clause)

33 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of clause)

34 52.222-26 D EQUAL OPPORTUNITY (APR 1984) (DEVIATION)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs

(b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Note: It shall not be a violation of E.O. 11246 for a contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. See 22.807(b)(4).

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall, within 30 days following the award, file Standard Form 100 (EEO-1), or any successor form, unless filed within 12 months preceding the date of award.

(8) The Contractor shall permit access to its premises by the contracting officer or the Office of Federal Contract Compliance Programs (OFCCP) for the purpose of conducting on-site compliance reviews and inspecting such books, records, accounts, and other materials as may be relevant to an investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies

invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)

35 52.222-27 D AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION  
(APR 1984) (DEVIATION)

(a) Definitions.

"Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance Programs, United States Department of Labor or a designee.

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means--

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan



for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each

individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.

(6) Disseminate the Contractor's equal employment policy by--

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all onsite supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school,

summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the Contractor--

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to--

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(End of clause)

36 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)

(a) Definitions. As used in this clause--

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

"Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Contractor's organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Veteran of the Vietnam era" means a person who--

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as--

(i) Employment;

(ii) Upgrading;

(iii) Demotion or transfer;

(iv) Recruitment;

(v) Advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings. (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all employment openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and

is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) Postings. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

37 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings. (1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

38 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE  
VIETNAM ERA (JAN 1999)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(End of clause)

39 52.223-2 CLEAN AIR AND WATER (APR 1984)

(a) "Air Act", as used in this clause, means the Clean Air Act (42 U.S.C. 7401, et seq.).

"Clean air standards," as used in this clause, means--

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));



(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the EPA or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with--

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the EPA, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the EPA determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251, et seq.).

(b) The Contractor agrees--

(1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

(End of clause)

(R 7-103.29 1975 OCT)

(R 1-1.2302)

40 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)

(a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution

Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Data Safety Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

(End of clause)

41 52.223-6 DRUG-FREE WORKPLACE (JAN 1997)

(a) Definitions. As used in this clause--

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall--within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about--

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency, and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

42 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 1996)

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) The facility does not have 10 or more full-time employees as

specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in Section 19.102 of the Federal Acquisition Regulation (FAR); or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt--

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall--

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

(End of clause)

43 52.225-5 BUY AMERICAN ACT--CONSTRUCTION MATERIALS (JUN 1997)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.

"Components," means those articles, materials, and supplies incorporated directly into construction materials.

"Construction materials," means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when

or how the individual parts or components of such systems are delivered to the construction site.

"Domestic construction material," means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(2) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

(b)(1) The Buy American Act (41 U.S.C. 10a-10d) requires that only domestic construction material be used in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the excepted construction material or components listed by the Government as follows:

%%Insert list of applicable accepted materials or indicate "none"  
none

(3) Other foreign construction material may be added to the list in paragraph (b)(2) of this clause if the Government determines that--

(i) The cost would be unreasonable (the cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate);

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(4) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in paragraph (b)(2) of this clause.

(c) Request for determination. (1) Contractors requesting to use foreign construction material under paragraph (b)(3) of this clause shall provide adequate information for Government evaluation of the request for a determination regarding the inapplicability of the Buy American Act. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, price, time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with paragraph (b)(3) of this clause. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause. The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(2) If the Government determines after contract award that an exception to the Buy American Act applies, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate

consideration shall not be less than the differential established in paragraph (b)(3)(i) of this clause.

(3) If the Government does not determine that an exception to the Buy American Act applies, the use of that particular foreign construction material will be a failure to comply with the Act.

(d) For evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers shall be included in the request:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of Measure	Quantity	Price (dollars)+
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2:			
Foreign construction material			
Domestic construction material			

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

+Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

(End of clause)

44 52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (AUG 1998)

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States by Executive order or regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, North Korea, and Sudan.

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

(End of clause)

45 52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (MAY 1999)

(a) For Department of Defense contracts, this clause applies only if the contract includes a subcontracting plan incorporated under the terms of the clause at 52.219-9, Small Business Subcontracting Plan. It does not apply

to contracts awarded based on a subcontracting plan submitted and approved under paragraph (g) of the clause at 52.219.

(b) Definitions. As used in this clause:

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., Chapter 17.

"Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership shall constitute not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1542(c).

"Interested party" means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(c) The Contractor agrees to use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer shall refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW, MS-334A-SIB, Washington, DC 20245. The BIA will determine the eligibility and notify the Contracting Officer. The 5 percent incentive payment will not be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

- (i) The estimated cost of a cost-type contract.
- (ii) The target cost of a cost-plus-incentive-fee prime contract.
- (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
- (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the equitable adjustment to the prime contract shall be 5 percent of the estimated cost, target cost or firm-fixed-price

included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(d) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, shall authorize an incentive payment of 5 percent of the amount paid to the subcontractor. Contracting Officers shall seek funding in accordance with agency procedures. The Contracting Officer's decision is final and not subject to the Disputes clause of this contract.

(End of clause)

46 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

(End of clause)

47 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence



and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

(End of clause)

48 52.227-4 PATENT INDEMNITY--CONSTRUCTION CONTRACTS (APR 1984)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

(End of clause)

(R 7-602.16 1964 JUN)

49 52.228-2 ADDITIONAL BOND SECURITY (OCT 1997)

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if--

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government;

(b) Any surety fails to furnish reports on its financial condition as required by the Government;

(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or

(d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

(End of clause)

50 52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has

been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe, or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(End of clause)

51 52.228-11 PLEDGES OF ASSETS (FEB 1992)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond--

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of--

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide--

(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

(End of clause)

52 52.228-12 PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS (OCT 1995)

In accordance with Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, upon the request of a

prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requester.

(End of clause)

53 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (JAN 1991)

(a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"All applicable Federal, State, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

(a) Payment of price. The Government shall pay the Contractor the contract price as provided in this contract.

(b) Progress payments. The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if--

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that--

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

(d) Refund of unearned amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall--

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until--

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) Retainage. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) Title, liability, and reservation of rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as--

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) Reimbursement for bond premiums. In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) Final payment. The Government shall pay the amount due the Contractor under this contract after--

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been

assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) Limitation because of undefinitized work. Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) Interest computation on unearned amounts. In accordance with 31 U.S.C. 3903(c)(1), the amount payable under subparagraph (d)(2) of this clause shall be--

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

(End of clause)

55 52.232-17 INTEREST (JUN 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

56 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(End of clause)

57 52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (JUN 1997)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments--

(1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(A) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date shall be the 14th day after the date of the Contractor's payment request, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after Government acceptance of the work or services completed by the Contractor, whichever is later. If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice, with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., prompt payment discount terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Any other information or documentation required by the contract.

(x) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(3) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government



business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(5) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) Additional interest penalty.

(i) A penalty amount, calculated in accordance with subdivision (a)(6)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor--

(A) Is owed an interest penalty of \$1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that--

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except--

(1) The additional penalty shall not exceed \$5,000;

(2) The additional penalty shall never be less than \$25; and

(3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(4)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(6)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments--

(1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the 30th day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause--

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that--

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) A copy of any notice issued by a Contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting Officer.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and--

(i) Make such payment within--

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon--

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--

(A) The amounts withheld under subparagraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until--

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under subdivision (e)(5)(i) of this clause.

(f) Third-party deficiency reports--

(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e)(6) of this clause--

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall--

(i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the

Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) Written notice of subcontractor withholding. A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying--

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the United States for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(End of clause)

58 52.232-34 PAYMENT BY ELECTRONIC FUNDS TRANSFER--OTHER THAN CENTRAL  
CONTRACTOR REGISTRATION (MAY 1999)

(a) Method of payment. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend payment due dates until such time as the Government makes payment by EFT (but see paragraph (d) of this clause).

(b) Mandatory submission of Contractor's EFT information. (1) The Contractor is required to provide the Government with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: "designated office") by \_\_\_\_\_. If not otherwise specified in this contract, the payment office is the designated office for receipt of the Contractor's EFT information. If more than one designated office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office(s).

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office. However, EFT information supplied to a designated office shall be applicable only to contracts that identify that designated office as the office to receive EFT information for that contract.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment. (1) The Government is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(e) Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (d) shall apply.

(f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.

(j) EFT information. The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

(1) The contract number (or other procurement identification number).

(2) The Contractor's name and remittance address, as stated in the contract(s).

(3) The signature (manual or electronic, as appropriate), title,



and telephone number of the Contractor official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

(5) The Contractor's account number and the type of account (checking, saving, or lockbox).

(6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.

(7) If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

(End of clause)

59 52.233-1 DISPUTES (DEC 1998)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows:

"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

60 52.233-3 PROTEST AFTER AWARD (AUG 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(End of clause)

61 52.236-2 DIFFERING SITE CONDITIONS (APR 1984)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

(End of clause)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

(End of clause)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When

requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(End of clause)  
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64 52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(End of clause)

65 52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of clause)

66 52.236-8 OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

(End of clause)

67 52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT,  
UTILITIES, AND IMPROVEMENTS (APR 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

(End of clause)

68 52.236-10 OPERATIONS AND STORAGE AREAS (APR 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

(End of clause)

69 52.236-11 USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

(End of clause)

70 52.236-12 CLEANING UP (APR 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

(End of clause)

71 52.236-13 I ACCIDENT PREVENTION (NOV 1991)--ALTERNATE I (NOV 1991)

(a) The Contractor shall provide and maintain work environments and procedures which will (1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities; (2) avoid interruptions of Government operations and delays in project completion dates; and (3) control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall--

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health

Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(f) Before commencing the work, the Contractor shall--

(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

(End of clause)

72 52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule



or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)

73 52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings

submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

(End of clause)

74 52.236-26 PRECONSTRUCTION CONFERENCE (FEB 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

(End of clause)

75 52.242-13 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

(End of clause)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes--

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part

of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(End of clause)

78 52.244-2 SUBCONTRACTS (AUG 1998)

(a) Definitions. As used in this clause--

Approved purchasing system means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

Consent to subcontract means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

Subcontract means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.

(c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that--

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds--

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

(f)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting--

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (c), (d), or (e) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination--

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

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(End of clause)

79 52.245-1 PROPERTY RECORDS (APR 1984)

The Government shall maintain the Government's official property records in connection with Government property under this contract. The Government Property clause is hereby modified by deleting the requirement for the Contractor to maintain such records.

(End of clause)

(AV 7-104.24(g) 1967 AUG)

80 52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not--

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector

authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

(End of clause)

81 52.248-3 I VALUE ENGINEERING--CONSTRUCTION (MAR 1989)--ALTERNATE I  
(APR 1984)

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) below.

(b) Definitions. "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the

acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) below).

"Value engineering change proposal (VECP)" means a proposal that--

- (1) Requires a change to this, the instant contract, to implement; and
- (2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change--

- (i) In deliverable end item quantities only; or

- (ii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

- (1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

- (2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

- (3) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.

- (4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

- (5) A prediction of any effects the proposed change would have on collateral costs to the agency.

- (6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

- (7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Resident



Engineer at the worksite, with a copy to the Contracting Officer.

(e) Government action. (1) The Contracting Officer shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer shall notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept or reject all or part of any VECP shall be final and not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(f) Sharing. (1) Rates. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (i) 45 percent for fixed-price contracts or (ii) 75 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to--

- (i) Accept the VECP;
- (ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and
- (iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(h) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering--Construction clause of contract \_\_\_\_\_, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal

submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of clause)

82 52.249-2 I TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)  
(SEP 1996)--ALTERNATE I (SEP 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1 year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of--

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor

for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

83 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if-

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or

contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

84 52.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) Definition. "Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the Contracting Officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the Contracting Officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

85 52.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (MAR 1999)

(a) Definitions.

As used in this clause--

(1) "Arising out of a contract with the DoD" means any act in connection with--

(i) Attempting to obtain;

(ii) Obtaining; or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) "Conviction of fraud or any other felony" means any conviction for fraud or a felony in violation of state or Federal criminal statutes,

whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) "Date of conviction" means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving--

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On the board of directors of any DoD contractor or first-tier subcontractor;

(3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that a defense Contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly--

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the Contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as--

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify--

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and

(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

(End of clause)

86 52.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the Contractor.

(End of clause)

87 52.219-7003 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS) (APR 1996)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, clause of this contract.

(a) Definitions.

"Historically black colleges and universities," as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

"Minority institutions," as used in this clause, means institutions meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) Except for company or division-wide commercial items subcontracting plans, the term "small disadvantaged business," when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 46-48), may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under Section 831 of Pub. L. 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded--

(1) Protege firms which are qualified organizations employing the severely handicapped; and

(2) Former protege firms that meet the criteria in Section 831(g)(4) of Pub. L. 101-510.

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses



for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(End of clause)

88 52.223-7004 DRUG-FREE WORK FORCE (SEP 1988)

(a) Definitions.

(1) "Employee in a sensitive position," as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) "Illegal drugs," as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing--

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of Subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such time as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing programs shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

89 52.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (JAN 1999)

(a) The Contractor agrees to deliver under this contract only such of the following articles that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico--

- (1) Food;
- (2) Clothing;
- (3) Tents, tarpaulins, or covers;
- (4) Cotton and other natural fiber products;
- (5) Woven silk or woven silk blends;
- (6) Spun silk yarn for cartridge cloth;
- (7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics;
- (8) Canvas products;
- (9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or
- (10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing such fibers, yarns, fabrics, or materials.

(b) This clause does not apply--

(1) To supplies listed in FAR 25.108(d)(1), or other supplies for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico;

(3) To chemical warfare protective clothing produced in the countries listed in subsection 225.872-1 of the Defense FAR Supplement;

(4) To purchase of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but not the purchase of the synthetic or coated synthetic fabric itself), if such fabric is to be used as a component of an end item that is not a textile product. Examples of

textile products, made in whole or in part of fabric, include--

- (i) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);
- (ii) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;
- (iii) Upholstered seats (whether for household, office, or other use); and
- (iv) Parachutes (Federal Supply Class 1670); or

(5) To purchases of articles containing para-aramid fibers and yarns manufactured in a country listed in subsection 225.872-1 of the Defense FAR Supplement, if the Secretary of Defense makes a determination for such purchases in accordance with Section 807 of Pub. L. 105-261.

(End of clause)

90 52.227-7033 RIGHTS IN SHOP DRAWINGS (APR 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

91 52.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)

When the allowability of costs under this contract is determined in accordance with Part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with Part 231 of the Defense FAR Supplement, in effect on the date of this contract.

(End of clause)

92 52.236-7000 MODIFICATION PROPOSALS--PRICE BREAKDOWN (DEC 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown--

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for--

- (i) Material;
- (ii) Labor;
- (iii) Equipment;
- (iv) Subcontracts; and
- (v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

(End of clause)

93 52.236-7008 CONTRACT PRICES--BIDDING SCHEDULES (DEC 1991)

(a) The Government's payment for the items listed in the Bidding Schedule shall constitute full compensation to the Contractor for--

(1) Furnishing all plant, labor, equipment, appliances, and materials; and

(2) Performing all operations required to complete the work in conformity with the drawings and specifications.

(b) The Contractor shall include in the prices for the items listed in the Bidding Schedule all costs for work in the specifications, whether or not specifically listed in the Bidding Schedule.

(End of provision)

94 52.242-7000 POSTAWARD CONFERENCE (DEC 1991)

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation Subpart 42.5.

(End of clause)

95 52.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR Part 31 and DFARS Part 231, in effect on the date of this contract, apply.

(End of clause)

96 52.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (NOV 1995)

(a) Definitions. As used in this clause--

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) "Department of Defense (DoD)" means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the

prime contract and who is performing any part of the work or other requirement of the prime contract. However, effective May 1, 1996, the term does not include a supplier, materialman, distributor, or vendor of commercial items or commercial components.

(6) "Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) Supplies includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall employ U.S.-flag vessels in the transportation by sea of any supplies to be furnished in the performance of this contract. The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that--

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(c) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract.

Requests shall contain at a minimum--

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(d) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information--

(1) Prime contract number;

- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of the steamship company.

(e) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief--

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	Item Description	Contract Line Items	Quantity
Total.....			

(f) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(g) The Contractor shall include this clause, including this paragraph (g) in all subcontracts under this contract, which exceed the simplified acquisition threshold in Part 13 of the Federal Acquisition Regulation.

(End of clause)

97 52.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (NOV 1995)

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor--

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties, in all subcontracts hereunder, except (effective May 1, 1996) subcontracts for the acquisition of commercial items or components.

(End of clause)

(a) This clause does not apply to terminations. See 52.249-5000, Basis for Settlement of Proposals, and FAR Part 49.

(b) Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a Contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the Contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series equipment from the Contractor's accounting records, costs for that equipment shall be based upon the applicable provisions for the applicable provisions of EP 1110-1-8, "Construction Equipment Ownership and Operating Expense Schedule." Region V. Working conditions shall be considered to be average for determining equipment rates using the schedule unless specified otherwise by the Contracting Officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be used or a rate may be developed using the formula provided in the schedule. For forward pricing, the Schedule in effect at the time of negotiations shall apply. For retroactive pricing, the Schedule in effect at the time the work was performed shall apply.

(c) Equipment rental costs are allowable, subject to the provision of FAR 31.105(d)(ii) and FAR 31.205-36. Rates for equipment rented from an organization under common control, lease-purchase arrangements, and sale-leaseback arrangements will be determined using the schedule except that actual rates will be used for equipment leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees.

(d) When actual equipment costs are proposed and the total amount of the pricing action exceeds the small purchase threshold, the contracting officer shall request the contractor to submit either certified cost or pricing data, or partial/limited data, as appropriate.

END OF SECTION 00700

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SECTION 00800

SPECIAL CONTRACT REQUIREMENTS

1 52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (APR 1984)

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to the Government as liquidated damages, the sum of \$190.00 for each day of delay.

(b) If the Government terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If the Government does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

(End of clause)

2 52.211-13 TIME EXTENSIONS (APR 1984)

Notwithstanding any other provisions of this contract, it is mutually understood that the time extensions for changes in the work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements so delayed and that the remaining contract completion dates for all other portions of the work will not be altered and may further provide for an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)

3 52.236-1 PERFORMANCE OF WORK BY THE CONTRACTOR (APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least 25 percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

(End of clause)

(R 7-603.15 1965 JAN)

(R 1-18.104)

4 52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or

workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of--

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)

(R 7-604.4 1976 JUL)

5 52.236-7001 CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS (DEC 1991)

(a) The Government--

(1) Will provide the Contractor, without charge, 1 updated contract CD-Rom only - no hard copies will be provided sets (five unless otherwise specified) of large-scale contract drawings and

specifications except publications incorporated into the technical provisions by reference;

(2) Will furnish additional sets on request, for the cost of reproduction; and

(3) May, at its option, furnish the Contractor one set of reproducibles, or half-size drawings, in lieu of the drawings in paragraph (a)(1) of this clause.

(b) The Contractor shall--

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies; and

(4) Be responsible for any errors which might have been avoided by complying with this paragraph (b).

(c) Large scale drawings shall, in general, govern small scale drawings. Figures marked on drawings shall, in general, be followed in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work, but shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title	File	and	Drawing No.
Vicinity Map, Area Map and Index to Drawings			CB130-C4-1/1
Site Plan	CB130-C4-1/2		
Existing Typical Sections	CB130-C4-1/3		
Typical Repair Sections	CB130-C4-12/1		
Miscellaneous Guardrail Details	CB130-C4-12/2		

(End of clause)

6 52.0-4001 CONTRACTING OFFICER

The Contracting Officer signing this contract is the primary Contracting Officer on this contract. However, any Contracting Officer assigned to the Tulsa District and acting within his authority may take formal action on this contract when a contract action needs to be taken and the primary Contracting Officer is away from the office.

7 52.0-4002 WAGE RATES

The following **Wage Determination No. (s) are attached** and made a part hereof: **KS990064 with two modifications dated 06/4/1999**

8 52.0-4020 TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER (OCT 1989)  
(ER 415-1-15)

1. This provision specifies the procedure for determination of time extensions for unusually severe weather in accordance with the contract clause entitled "Default: (Fixed Price Construction)". In order for the Contracting Officer to award a time extension under this clause, the following conditions must be satisfied:

a. The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.

b. The unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the contractor.

2. The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location and will constitute the base line for monthly weather time evaluations. The contractor's progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY WORK DAYS BASED ON (5) DAY WORK WEEK											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
0	0	0	0	0	0	0	2	2	1	0	0

3. Upon acknowledgment of the Notice to Proceed (NTP) and continuing throughout the contract, the contractor will record on the daily CQC report, the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical activities for 50 percent or more of the contractor's scheduled work day. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated in paragraph 2, above, the contracting officer will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and issue a modification in accordance with the contract clause entitled "Default (Fixed Price Construction)".

(End of Clause)

9 52.0-4021 INCLUSION OF LABOR PROVISIONS IN SUBCONTRACTS (JUN 1984)  
(DAEN-CCL LTR)

To show compliance with CONTRACT CLAUSE entitled "Subcontracts," The Contractor should, within 7 days after award of any subcontract either by himself or a subcontractor or any tier, deliver to the Contracting Officer a completed Standard Form 1413. Nothing contained in this clause or any other provision of this contract shall create any contractual relation between any subcontractor and the Government.

(End of Clause)

10 52.0-4022 REQUIRED INSURANCE (APR 1984) (FAR 28.307-2)

Pursuant to the Contract Clause entitled "Insurance Work on a Government Installation", the Contractor shall procure and maintain during the entire period of his performance under this contract the following minimum insurance.

(a) Workmen's Compensation and Employers' Liability Insurance in compliance with applicable state statutes, with a minimum employers' liability coverage of \$100,000.

(b) Comprehensive General Liability Insurance for bodily injury in the minimum limits of \$500,000 per occurrence. No property damage liability insurance is required.

(c) Comprehensive Automobile Liability Insurance covering the operation of all automobiles used in connection with the performance of the contract in the minimum limits of \$200,000 per person and \$500,000 per occurrence for bodily injury and \$25,000 per occurrence for property damage.

The Contractor agrees to insert the substance of this clause, including this paragraph, in all subcontracts hereunder.

(End of Clause)

11 52.0-4030 BASIS FOR SETTLEMENT OF PROPOSALS (EFARS 52.249-5000)  
(MAR 1995)

"Actual costs will be used to determine equipment cost for a settlement proposal submitted on the total cost basis under FAR 49.206-2b. In evaluating a termination settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:

(1) Actual costs for each piece of equipment, or groups of similar serial or series equipment, need not be available in the contractor's accounting records to determine total actual equipment costs.

(2) If equipment costs have been allocated to a contract using predetermined rates, those charges will be adjusted to actual costs.

(3) Recorded job costs adjusted for unallowable and unallocable expenses will be used to determine equipment operating expenses.

(4) Ownership costs (depreciation) will be determined using the contractor's depreciation schedule (subject to the provisions of FAR 31.205-11).

(5) License, taxes, storage and insurance costs are normally recovered as an indirect expense and unless the contractor charges these costs directly to contracts, they will be recovered through the indirect expense rate."

(End of Clause)

12 52.0-4056 PARTNERING AGREEMENT

Tulsa District is an avid supporter and believer in the benefits of Partnering on our projects. Partnering is a necessary and valuable method of establishing mutual goals and working relationships among project participants, drawing on the strengths of each. As a result, the Contracting Officer or his/her representative will contact the

contractor's management after contract award to discuss partnering for this project. Partnering opportunities will be explored and degree of partnering will be discussed. Hopefully, a partnering relationship will be implemented. The Partnering relationship will not be legally binding, but will represent a commitment to work together toward common goals.

The Contractor should not include any anticipated costs for partnering in the bid or proposal. The Partnering relationship will be bilateral and participation will be voluntary. The contractor is urged to consider Partnering as a means of promoting cooperation to the advantage of the contractor and the Government.

13 52.0-4071 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)  
FAR 52.0211-0010

The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than 67 calendar days. The time stated for completion shall include final cleanup of the premises.

14 52.0-4082 DAMAGE TO WORK

The responsibility for damage to any part of the permanent work shall be as set forth in the CONTRACT CLAUSE entitled "Permits and Responsibilities." However, if in the judgment of the Contracting Officer, any part of the permanent work performed by the contractor is damaged by flood or earthquake, which damage is not due to the failure of the contractor to take reasonable precautions or to exercise sound engineering and construction practices in the conduct of the work, the contractor will make the repairs as ordered by the Contracting Officer and full compensation for such repairs will be made at the applicable contract unit or lump sum prices as fixed and established in the contract. If, in the opinion of the Contracting Officer, there are no contract unit or lump sum prices applicable to any part of such work an equitable adjustment pursuant to the CONTRACT CLAUSE entitled "Changes" will be made as full compensation for the repair of that part of the permanent work for which there are no applicable contract unit or lump sum prices. Except as herein provided, damage to all work (including temporary construction), utilities, materials, equipment and plant shall be repaired to the satisfaction of the Contracting Officer at the contractor's expense, regardless of the cause of such damage.

(End of Clause)

15 52.0-4220 PAYMENT FOR MATERIALS DELIVERED OFF-SITE  
(EFARS 52.232-5000) (MAR 1995)

(a) Pursuant to FAR clause 52.232-5, Payments Under Fixed Priced Construction Contracts, materials delivered to the Contractor at locations other than the site of the work may be taken into consideration in making payment if included in payment estimates and if all the conditions of the General Provisions are fulfilled. Payment for items delivered to locations other than the work site will be limited to: (1) materials required by the technical provisions; or (2) materials that have been fabricated to the point where they are identifiable to an item of work required under this contract.

(b) Such payment will be made only after receipt of paid or receipted invoices or invoices with canceled check showing title to the items in the prime contractor and including the value of material and labor incorporated into the item. In addition to petroleum products, payment for materials delivered off-site is limited to the following items: those items meeting the requirements of subparagraph (a) above.

16 52.0-4440 YEAR 2000 COMPLIANCE (CEPR-P memorandum dtd JUL 1998)

In accordance with FAR 39.106, the contractor shall ensure that, with respect to any design, construction, goods or services under this contract as well as any subsequent task/delivery orders issued under this contract (if applicable), all information technology contained therein shall be Year 2000 compliant. The contractor shall:

a) Perform, maintain, and provide an inventory of all major components to include structures, equipment, items, parts, and furnishings under this contract and each task/delivery order (if applicable) which may be affected by the Year 2000 compliant requirement.

b) Indicate whether each component is currently Year 2000 compliant or requires an upgrade for compliance prior to Government acceptance.

END OF SECTION 00800

GENERAL DECISION KS990063 06/04/99 KS63  
Superseded General Decision No. KS980063

State: Kansas

Construction Type:  
HEAVY  
SEWER AND WATER LINE

County(ies):  
ALLEN                      CRAWFORD                      NEOSHO  
BOURBON                      LABETTE                      WILSON  
CHEROKEE                      MONTGOMERY                      WOODSON

HEAVY CONSTRUCTION PROJECTS

WATER AND SEWER LINE CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	03/12/1999
1	04/09/1999
2	06/04/1999

DACW56-99-B-0031, EMBANKMENT SLIDE REPAIR AND GUARDRAIL REPLACEMENT, FALL  
RIVER/TORONTO LAKE, WOODSON COUNTY, KANSAS



IRON0010T 04/19/1998

	Rates	Fringes
ALLEN (Remainder of County), BOURBON, CRAWFORD (Townships of Arcadia, Arna, Brazilton, Cockrell, Crowsburg, Engle- vale, Farlington, Fox Town, Franklin, Girard, Hepler, Radley, Ringo, Walnut), NEOSHO (NE corner to include townships of Kimball, Stark), WOODSON (NE tip to include the township of Neosha Falls)		
IRONWORKERS	17.30	8.78

IRON0584C 06/01/1998

	Rates	Fringes
CHEROKEE, CRAWFORD (SW Corner), LABETTE, MONTGOMERY (Except NW Corner), NEOSHO (SE Corner), WILSON (SE Corner)		
IRONWORKERS, STRUCTURAL	16.30	6.87

\* IRON0606A 06/01/1999

	Rates	Fringes
ALLEN, (SW Corner), MONTGOMERY (NW Tip), NEOSHO (NW Corner to include the township of Chanute), WILSON (Except SE Corner), WOODSON (Except NE Corner)		
IRONWORKERS, STRUCTURAL	16.15	5.09

SUKS2006A 06/05/1990

	Rates	Fringes
CARPENTERS	9.19	
LABORERS, UNSKILLED	8.16	
TRUCK DRIVERS	7.52	
BACKHOE OPERATORS	9.80	
LOADER OPERATORS	10.18	
BULLDOZER OPERATORS	8.78	
SCRAPER OPERATORS	8.05	

WELDERS - Receive rate prescribed for craft performing operation  
to which welding is incidental.

Unlisted classifications needed for work not included within  
the scope of the classifications listed may be added after  
award only as provided in the labor standards contract clauses  
(29 CFR 5.5(a)(1)(v)).

In the listing above, the "SU" designation means that rates  
listed under that identifier do not reflect collectively  
bargained wage and fringe benefit rates. Other designations  
indicate unions whose rates have been determined to be  
prevailing.

#### WAGE DETERMINATION APPEALS PROCESS

- 1.) Has there been an initial decision in the matter? This can  
be:

KS990063 - 2

06/04/1999

00800-9

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.  
END OF GENERAL DECISION

## SECTION 01040

## COORDINATION AND MEETINGS

## 1 GENERAL

## 1.1 UTILITY OUTAGE COORDINATION

## 1.1.1 Approval

The Contractor shall obtain written permission/approval from the Contracting Officer 21 days prior to:

(1) Performing any work which will close any street or interrupt any utility service.

(2) Utility outages: The proposed outage request shall indicate the proposed work and length of outage.

## 1.1.2 Government Right to Delay

The Government reserves the right to postpone for 7 days, any scheduled outages. There shall be no outages when the outside temperature is expected to be below 35 degrees F.

## 1.1.3 Government Performance

Government personnel shall perform all shutting off and turning on of valves and switches necessary to accomplish scheduled outage.

## 2 PRODUCTS (NOT APPLICABLE)

## 3 EXECUTION (NOT APPLICABLE)

## SECTION 01100

## SAFETY

## 1 GENERAL

## 1.1 SAFETY AND HEALTH REQUIREMENTS MANUAL (EM 385-1-1, SEPTEMBER 1996).

In accordance with CONTRACT CLAUSE Paragraph "ACCIDENT PREVENTION", this manual applies to all work under this contract. There are submittals required by this manual which require Government Approval (GA) before certain phases of work can begin.

## 1.2 MANAGEMENT OF CONTRACTOR-GENERATED HAZARDOUS WASTES AND PETROLEUM PRODUCTS (40 CFR, PART 262)

Contractors generating hazardous wastes and petroleum products on the site at which this contract is performed shall be responsible for their management responsibilities as described in 40 CFR, part 262 and with the Oklahoma State Industrial Waste Management Regulations.

## 1.3 MONTHLY EXPOSURE REPORT

A monthly report of accident and exposure data shall be submitted by the Contractor no later than the 5<sup>th</sup> day of the following month. The report shall be submitted on SWD Form 743-R "MONTHLY EXPOSURE REPORT OF OPERATIONS AND ACTIVITIES" which will be provided to the Contractor at the pre-construction conference.

## 1.4 ACCIDENT PREVENTION PREPLANNING (SWTCD)

In addition to the requirements of the CONTRACT CLAUSE entitled "Accident Prevention," the Contractor shall:

a. Meet with the Contracting Officer and/or his representative before each major phase of construction. The purpose of the meeting will be to identify the specific hazards that are associated with that phase of construction. The meeting will include the general Contractor's superintendent, Quality Control Inspector, and superintendent or foreman in charge of the operation whether performed by the general Contractor or subcontractor.

b. Identify at this meeting what construction methods and equipment will be used to protect the workmen against the hazards that are anticipated during that phase of construction. This plan, when agreed upon by the Contracting Officer and Contractor, will become a part of the Contractor's safety program.

c. Be responsible for insuring that all subcontractors are knowledgeable and follow the safety plan agreed upon by the Contractor and Contracting Officer.

## 2 PRODUCTS (NOT APPLICABLE)

## 3 EXECUTION (NOT APPLICABLE)

## SECTION 01110

## SITE CONDITIONS

## 1 GENERAL

In the station interval 30+75 to 44+00, the downstream embankment has shown movement. The movement has led to displacement of guardrail and cracking in the pavement. The crest repair work in this interval will involve rebuilding the shoulder as an aggregate shoulder and reinstalling the guardrail on new steel posts. In the 75-foot interval from 40+50 to 41+50, the downstream lane of pavement will be replaced due to severe cracking.

On the upper 2H:1V slope in the interval 30+75 to 44+00, mowing tractors have badly rutted the surface. To repair this surface, the top 9 inches of soil will be stripped and stockpiled, and the surface will be rebuilt with rock spalls.

On the upper 2H:1V slope in the station interval 11+08 to 27+00, mowing tractors have badly rutted the surface. To repair this surface, the top 9 inches of soil will be stripped and stockpiled, and the surface will be rebuilt with rock spalls.

## 2 PRODUCTS (NOT APPLICABLE)

## 3 EXECUTION (NOT APPLICABLE)

--End of Section--

## SECTION 01300

## SUBMITTALS

## 1 GENERAL

## 1.1 SHOP DRAWINGS

## 1.1.1 General

Shop drawings shall conform to requirements of CONTRACT CLAUSE entitled "Specifications and Drawings for Construction." The Contractor shall submit to the Contracting Officer for approval four copies of all shop drawings as called for under the various headings of these specifications. Three sets of all shop drawings will be retained by the Contracting Officer and one set will be returned to the Contractor. Submittals shall include items such as: Contractor's, manufacturer's, or fabricator's drawings; descriptive literature including (but not limited to) catalog cuts, diagrams, operating charts or curves; test reports; samples; O&M manuals including parts list; certifications; warranties and other such required submittals. Submittals requiring Government approval shall be scheduled and made prior to the acquisition of the material or equipment covered thereby.

## 1.1.2 Review and Approval of Shop Drawings and Samples

The Contractor shall submit all items as required in the other sections of these specifications. The Contracting Officer may request submittals in addition to those specified when deemed necessary to adequately describe the work required. Units of weights and measures used on all submittals shall be the same used in the contract drawings. Each submittal shall be complete and in sufficient detail to allow ready determination of compliance with contract requirements. Prior to submittal, all items shall be checked and approved by the Contractor's Quality Control (CQC) representative and each respective transmittal shall be stamped, signed, and dated by the CQC representative certifying that the accompanying submittal complies with the contract requirements.

## 1.1.3 Approval Stamp

Approval by the Contractor shall be accomplished by stamping shop drawings with a stamp with information similar to the following:

_____ Approved
_____ Approved with corrections as noted on submittal data and/or attached sheets(s).
SIGNATURE: _____
TITLE: _____
DATE: _____

## 1.2 TRANSMITTAL FORM (ENG FORM 4025)

Transmittal Form (ENG Form 4025) shall be used for submitting submittals in accordance with the instructions on the reverse side of the form. (See sample Form 4025 at the end of this section) These forms will be furnished to the Contractor as needed. This form shall be properly completed by filling out all the heading blank spaces and identifying each item submitted. The specification paragraph or sheet number of the contract drawings pertinent to the data submitted shall be provided for each item. All samples of materials submitted as required by these specifications shall be properly identified and labeled for ready identification, and upon being approved, stored at the site of the work for jobsite use until all work has been completed and accepted by the Contracting Officer.

All proposed deviations requested by the Contractor shall be noted in the "Remarks" column of the ENG Form 4025. The Contractor shall set forth in writing the reason for any deviations and annotate such deviations on the shop drawing. The Government reserves the right to rescind inadvertent approval of shop drawings containing unnoted deviations.

## 1.3 SUBMITTAL REGISTER (ENG FORM 4288)

### 1.3.1 Preparation

The submittal register lists all items required by the specifications to be submitted to the Government. The Contractor shall ensure that all items requiring submittal be included on the submittal register. The list shall include shop drawings, tests, certificates, computations, and all other items specified to be submitted to the Contracting Officer except safety plans, quality control plans, environmental plans, and routine quality control tests. The listing shall give the page and paragraph number of the specifications for each item listed and the Contractor Scheduled Dates.

The technical specification sections shall be referenced for complete submittal requirements. The Contractor shall complete the form and return the completed form to the Contracting Officer for approval. The approved Submittal Register will become the scheduling document and will be used to control submittals throughout the life of the contract. This register and the progress schedules shall be coordinated.

All various types of submittals for each item (i.e. data, drawings, instructions, certifications, etc.) shall be submitted concurrently. Adequate time, but not less than 30 days, shall be allowed on the Submittal Register for review and approval by the Government of all submittals. Delays, damages, or time extensions will not be allowed for time lost due to late submittals.

#### 1.3.2 Submittal and Maintenance of Submittal Register

##### 1.3.2.1 Initial Submittal

The Submittal Register shall be submitted within 21 days after notice to proceed.

##### 1.3.2.2 Register Maintenance

The Contractor shall maintain the Submittal Register listing all submittals as the items are submitted. Listings shall be grouped by section number and listed in numerical sequence of the Transmittal Number shown on Form 4025. When the project is 90 percent complete, the up-to-date, typed Form shall be submitted to the Contracting Officer for review to assure that required submittals and resubmittals have been noted.

##### 1.3.2.3 Final Submittal

Upon completion of the work the completed Submittal Register shall be submitted to the Contracting Officer.

#### 1.4 SUBMITTAL CLASSIFICATION

Submittals are classified as follows:

##### 1.4.1 Government Approved (GA)

Governmental approval is required for extensions of design, critical materials, deviations, equipment whose compatibility with the entire system must be checked, and other items as designated by the Contracting Officer. Within the terms of the Contract Clause entitled "Specifications and Drawings for Construction," they are considered to be "shop drawings." Upon completion of review of submittals requiring Government approval, the submittals will be identified as having received approval by being so stamped and dated. Three copies of the submittal will be retained by the Contracting Officer and one copy of the submittal will be returned to the Contractor.

##### 1.4.2 For Information Only (FIO)

All submittals not requiring Government approval will be for information only. They are not considered to be "shop drawings" within the terms of the Contract Clause referred to above.



### 1.5 APPROVED SUBMITTALS

The approval of submittals by the Contracting Officer shall not be construed as a complete check, but will indicate only that the general method of construction, materials, detailing and other information are satisfactory. Approval will not relieve the Contractor of the responsibility for any error which may exist. After submittals have been approved by the Contracting Officer, no resubmittal for the purpose of substituting materials or equipment will be given consideration unless accompanied by an explanation as to why a substitution is necessary.

### 1.6 DISAPPROVED SUBMITTALS

The Contractor shall make all corrections required by the Contracting Officer and promptly furnish a corrected submittal in the form and number of copies as specified for the initial submittal. If the Contractor considers any correction indicated on the submittals to constitute a change to the contract, notice as required under the Contract Clause entitled "Changes" shall be given promptly to the Contracting Officer.

### 1.7 WITHHOLDING OF PAYMENT

Payment for materials incorporated in the work will not be made if required approvals have not been obtained.

### 1.8 SUBMITTAL DESCRIPTIONS

The submittals described below are those required and further described in other sections of the specifications. Submittals required by the CONTRACT CLAUSES and other nontechnical parts of the contract are not included.

#### SD-01 Data

Submittals which provide calculations, descriptions, or documentation of the work.

#### SD-04 Drawings

Submittals which graphically show relationship of various components of the work, schematic diagrams of systems, details of fabrication, layouts of particular elements, connections, and other relational aspects of the work.

#### SD-06 Instructions

Preprinted material describing installation of a product, system or material, including special notices and material safety data sheets, if any, concerning impedances, hazards, and safety precautions.

#### SD-07 Schedules

Tabular lists showing location, features, or other pertinent information regarding products, materials, equipment, or components to be used in the work.

## SD-08 Statements

A document, required of the Contractor, or through the Contractor, from a supplier, installer, manufacturer, or other lower tier Contractor, the purpose of which is to confirm the quality or orderly progression of a portion of the work by documenting procedures, acceptability of methods or personnel, qualifications, or other verifications of quality.

## SD-09 Reports

Reports of inspections or tests, including test methods used, test results, analysis and interpretation of test results.

## SD-13 Certificates

Statement signed by responsible official of a manufacturer of a product, system or material, attesting that the product, system or material meets specified requirements. The statement identifies the date of the certificate, name of the project, and list of the specific requirements which are being certified.

## SD-14 Samples

Samples, including both fabricated and unfabricated physical examples of materials, products, and units of work as complete units or as portions of units of work.

## SD-18 Records

Documentation to record compliance with technical or administrative requirements.

## SD-19 Operation and Maintenance Manuals

Data which forms a part of an operation and maintenance manual.

2 PRODUCTS (NOT APPLICABLE)

3 EXECUTION (NOT APPLICABLE)

TRANSMITTAL OF SHOP DRAWINGS, EQUIPMENT DATA, MATERIAL SAMPLES, OR <b>MANUFACTURER'S CERTIFICATES OF COMPLIANCE</b> <i>(Read instructions on the reverse side prior to initiating this form)</i>	DATE	TRANSMITTAL NO.
--	------	-----------------

<b>SECTION I - REQUEST FOR APPROVAL OF THE FOLLOWING ITEMS</b> <i>(This section will be initiated by the contractor)</i>			
TO:	FROM:	CONTRACT NO.	CHECK ONE: <input type="checkbox"/> THIS IS A NEW TRANSMITTAL <input type="checkbox"/> THIS IS A RESUBMITTAL OF TRANSMITTAL _____

SPECIFICATION SEC. NO. <i>(Cover only one section with each transmittal)</i>	PROJECT TITLE AND LOCATION
--	----------------------------

ITEM NO.	DESCRIPTION OF ITEM SUBMITTED <i>(Type size, model number/etc.)</i>	MFG OR CONTR. CAT., CURVE DRAWING OR BROCHURE NO. <i>(See instruction no. 8)</i>	NO. OF COPIES	CONTRACT REFERENCE DOCUMENT		FOR CONTRACTOR USE CODE	VARIATION <i>(See instruction No. 6)</i>	FOR CE USE CODE
				SPEC. PARA. NO.	DRAWING SHEET NO.			
<i>a.</i>	<i>b.</i>	<i>c.</i>	<i>d.</i>	<i>e.</i>	<i>f.</i>	<i>g.</i>	<i>h.</i>	<i>i.</i>

REMARKS	I certify that the above submitted items have been reviewed in detail and are correct and in strict conformance with the contract drawings and specifications except as other wise stated.  <div>NAME AND SIGNATURE OF CONTRACTOR</div>
---------	---

<b>SECTION II - APPROVAL ACTION</b>		
ENCLOSURES RETURNED <i>(List by Item No.)</i>	NAME, TITLE AND SIGNATURE OF APPROVING AUTHORITY	DATE

CONTRACT NO.
--------------

CONTRACTOR
------------

	SPECIFICATION SECTION
--	-----------------------

[illegible]

## SECTION 01310

## PROJECT SCHEDULE

## 1 GENERAL

Project schedule shall be in accordance with the contract clause SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984) in Section 00800.

## 2 PRODUCTS (NOT APPLICABLE)

## 3 EXECUTION (NOT APPLICABLE)

## SECTION 01440

## CONTRACTOR QUALITY CONTROL

## 1 GENERAL

## 1.1 PAYMENT

Separate payment will not be made for providing and maintaining an effective Quality Control program, and all costs associated therewith shall be included in the applicable unit prices or lump-sum prices contained in the Bidding Schedule.

## 2 PRODUCTS (NOT APPLICABLE)

## 3 EXECUTION

## 3.1 GENERAL

The Contractor is responsible for quality control and shall establish and maintain an effective quality control system in compliance with the Contract Clause entitled "INSPECTION OF CONSTRUCTION." The quality control system shall consist of plans, procedures, and organization necessary to produce an end product which complies with the contract requirements. The system shall cover all construction operations, both on-site and off-site, and shall be keyed to the proposed construction sequence.

## 3.2 QUALITY CONTROL PLAN

## 3.2.1 General

The Contractor shall furnish for review by the Government, not later than 30 days after receipt of notice to proceed and before the pre-construction conference, the Contractor Quality Control (CQC) Plan proposed to implement the requirements of the Contract Clause entitled "Inspection of Construction." The plan shall identify personnel, procedures, control, instructions, test, records, and forms to be used. The Government will consider an interim plan for the first 30 days of operation. Construction will be permitted to begin only after acceptance of the CQC Plan or acceptance of an interim plan applicable to the particular feature of work to be started. Work outside of the features of work included in an accepted interim plan will not be permitted to begin until acceptance of a CQC Plan or another interim plan containing the additional features of work to be started.

## 3.2.2 Content of the CQC Plan

The CQC plan shall include, as a minimum, the following to cover all construction operations, both on-site and off-site, including work by subcontractors, fabricators, suppliers and purchasing agents:

- a. A description of the quality control organization, including a chart showing lines of authority and acknowledgment that the CQC staff shall implement the three phase control system for all aspects of the work specified. The staff shall include a CQC system manager who shall report to the project manager or someone higher in the Contractor's organization. Project manager in this context shall mean the

individual with responsibility for the overall management of the project including quality and production.

- b. The name, qualifications (in resume format), duties, responsibilities, and authorities of each person assigned a CQC function.
- c. A copy of the letter to the CQC System Manager signed by an authorized official of the firm which describes the responsibilities and delegates sufficient authorities to adequately perform the functions of the CQC System Manager including authority to stop work which is not in compliance with the contract. The CQC System Manager shall issue letters of direction to all other various quality control representatives outlining duties, authorities and responsibilities. Copies of these letters will also be furnished to the Government.
- d. Procedures for scheduling, reviewing, certifying, and managing submittals, including those of subcontractors, off-site fabricators, suppliers and purchasing agents. These procedures shall be in accordance with Section 01300 SUBMITTALS.
- e. Control, verification and acceptance testing procedures for each specific test to include the test name, specification paragraph requiring test, feature of work to be tested, test frequency, and person responsible for each test. (Laboratory facilities will be approved by the Contracting Officer.)
- f. Procedures for tracking preparatory, initial, and follow-up control phases and control, verification, and acceptance tests including documentation.
- g. Procedures for tracking construction deficiencies from identification through acceptable corrective action. These procedures will establish verification that identified deficiencies have been corrected.
- h. Reporting procedures, including proposed reporting formats.
- i. A list of the definable features of work. A definable feature of work is a task which is separate and distinct from other tasks and has separate control requirements. It could be identified by different trades or disciplines, or it could be work by the same trade in a different environment. Although each section of the specifications may generally be considered as a definable feature of work, there are frequently more than one definable feature under a particular section. This list will be agreed upon during the coordination meeting.

### 3.2.3 Acceptance of Plan

Acceptance of the Contractor's plan is required prior to the start of construction. Acceptance is conditional and will be predicated on satisfactory performance during the construction. The Government reserves the right to require the Contractor to make changes in his CQC plan and operations including removal of personnel, as necessary, to obtain the quality specified.

### 3.2.4 Notification of Changes

After acceptance of the QC plan, the Contractor shall notify the Contracting Officer in writing a minimum of seven calendar days prior to any proposed change. Proposed changes are subject to acceptance by the Contracting Officer.

### 3.3 COORDINATION MEETING

After the Preconstruction Conference, before start of construction, and prior to acceptance by the Government of the Quality Control Plan, the Contractor shall meet with the Contracting Officer or Authorized Representative and discuss the Contractor's quality control system. During the meeting, a mutual understanding of the system details shall be developed, including the forms for recording the CQC operations, control activities, testing, administration of the system for both on-site and off-site work, and the interrelationship of Contractor's Management and control with the Government's Quality Assurance. Minutes of the meeting shall be prepared by the Government and signed by both the Contractor and the Contracting Officer. The minutes shall become a part of the contract file. There may be occasions when subsequent conferences will be called by either party to reconfirm mutual understandings and/or address deficiencies in the CQC system or procedures which may require corrective action by the Contractor.

### 3.4 QUALITY CONTROL ORGANIZATION

#### 3.4.1 CQC System Manager

The Contractor shall identify an individual within his organization at the site of the work who shall be responsible for overall management of CQC and have the authority to act in all CQC matters for the Contractor. This CQC System Manager shall be on the site at all times during construction and will be employed by the Contractor, except as noted in the following. An alternate for the CQC System Manager will be identified in the plan to serve in the event of the system manager's absence. Period of absence may not exceed two weeks at any one time, and not more than 45 workdays during a calendar year. The requirements for the alternate will be the same as for the designated CQC manager.

#### 3.4.2 CQC Organizational Staffing

The Contractor shall provide a CQC staff which shall be at the site of work at all times during progress, with complete authority to take any action necessary to ensure compliance with the contract.

##### 3.4.2.1 CQC Staff

Following are the minimum requirements for the CQC staff. These minimum requirements will not necessarily assure an adequate staff to meet the CQC requirements at all times during construction. The actual strength of the CQC staff may vary during any specific work period to cover the needs of the work period. When necessary for a proper CQC organization, the Contractor will add additional staff at no cost to the Government. This listing of minimum staff in no way relieves the Contractor of meeting the basic requirements of quality construction in accordance with contract



requirements. All CQC staff members shall be subject to acceptance by the Contracting Officer.

#### 3.4.2.2 CQC System Manager

The system manager shall be an experienced construction person with experience in related work. The CQC system manager may have duties as project superintendent in addition to quality control.

#### 3.4.2.3 Supplemental Personnel

A staff shall be maintained under the direction of the CQC system manager to perform all QC activities. The staff must be of sufficient size to ensure adequate QC coverage of all work phases, work shifts, and work crews involved in the construction. These personnel may perform other duties, but must be fully qualified by experience and technical training to perform their assigned QC responsibilities and must be allowed sufficient time to carry out these responsibilities. The QC plan shall clearly state the duties and responsibilities of each staff member.

#### 3.4.2.4 Training

In addition to the above experience and education requirements the CQC System Manager or the principal member of the CQC staff shall attend an 8 hour training course on "Construction Quality Management." This course will be periodically offered by the Corps of Engineers and times, dates and location will be provided at the Pre-construction Conference.

### 3.5 CONTROL

Contractor Quality Control is the means by which the Contractor ensures that the construction, to include that of subcontractors and suppliers, complies with the requirements of the contract. The controls shall be adequate to cover all construction operations, including both on-site and off-site fabrication, and will be keyed to the proposed construction sequence. The controls shall include at least three phases of control to be conducted by the CQC system manager for all definable features of work, as follows:

#### 3.5.1 Preparatory Phase

This phase shall be performed prior to beginning work on each definable feature of work and shall include:

- a. A review of each paragraph of applicable specifications.
- b. A review of the contract plans.
- c. A check to assure that all materials and/or equipment have been tested, submitted, and approved.
- d. A check to assure that provisions have been made to provide required control inspection and testing.
- e. Examination of the work area to assure that all required preliminary work has been completed and is in compliance with the contract.

- f. A physical examination of required materials, equipment, and sample work to assure that they are on hand, conform to approved shop drawing or submitted data, and are properly stored.
- g. A review of the appropriate activity hazard analysis to assure safety requirements are met.
- h. Discussion of procedures for constructing the work including repetitive deficiencies. Document construction tolerances and workmanship standards for that phase of work.
- i. A check to ensure that the portion of the plan for the work to be performed has been accepted by the Contracting Officer.

The Government shall be notified at least 24 hours in advance of beginning any of the required action of the preparatory phase. This phase shall include a meeting conducted by the CQC system manager and attended by the superintendent, other CQC personnel (as applicable), and the foreman responsible for the definable feature. The results of the preparatory phase actions shall be documented by separate minutes prepared by the CQC system manager and attached to the daily CQC report. The Contractor shall instruct applicable workers as to the acceptable level of workmanship required in order to meet contract specifications.

#### 3.5.2 Initial Phase

This phase shall be accomplished at the beginning of a definable feature of work. The following shall be accomplished:

- a. A check of preliminary work to ensure that it is in compliance with contract requirements. Review minutes of the preparatory meeting.
- b. Verification of full contract compliance. Verify required control inspection and testing.
- c. Establish level of workmanship and verify that it meets minimum acceptable workmanship standards. Compare with sample panels is appropriate.
- d. Resolve all differences.
- e. Check safety to include compliance with and upgrading of the safety plan and activity hazard analysis. Review the activity analysis with each worker.

The Government shall be notified at least 24 hours in advance of beginning the initial phase. Separate minutes of this phase shall be prepared by the CQC system manager and attached to the daily QC report. Exact location of initial phase shall be indicated for future reference and comparison with follow-up phases. The initial phase should be repeated for each new crew to work on-site, or any time acceptable specified quality standards are not being met.

#### 3.5.3 Follow-up Phase

Daily checks shall be performed to assure continuing compliance with contract requirements, including control testing, until completion of the

particular feature of work. The checks shall be made a matter of record in the CQC documentation. Final follow-up checks shall be conducted and all deficiencies corrected prior to the start of additional features of work which may be affected by the deficient work. The Contractor shall not build upon or conceal non-conforming work.

#### 3.5.4 Additional Preparatory and Initial Phases

Additional preparatory and initial phases may be conducted on the same definable features of work as determined by the Government if the quality of on-going work is unacceptable; or if there are changes in the applicable QC staff or in the on-site production supervision or work crew; or if work on a definable feature is resumed after a substantial period of inactivity, or if other problems develop.

#### 3.6 COMPLETION INSPECTION

At the completion of all work or any increment thereof established by a completion time stated in the Special Contract Requirements entitled "Commencement, Prosecution, and Completion of Work," or stated elsewhere in the specifications, the CQC system manager shall conduct an inspection of the work and develop a "punch list" of items which do not conform to the approved plans and specifications. Such a list of deficiencies shall be included in the CQC documentation, as required by paragraph DOCUMENTATION below, and shall include the estimated date by which the deficiencies will be corrected. The CQC system manager or staff shall make a second inspection to ascertain that all deficiencies have been corrected and so notify the Government. These inspections and any deficiency corrections required by this paragraph will be accomplished within the time stated for completion of the entire work or any particular increment thereof if the project is divided into increments by separate completion dates.

#### 3.7 DOCUMENTATION

The Contractor shall maintain current records of quality control operations, activities, and tests performed, including the work of subcontractors and suppliers. These records shall be on an acceptable form and shall include factual evidence that required quality control activities and/or tests have been performed, including but not limited to the following:

- a. Contractor/subcontractor and their area of responsibility.
- b. Operating plant/equipment with hours worked, idle, or down for repair.
- c. Work performed each day, giving location, description, and by whom. When Network Analysis (NAS) is used, identify each phase of work performed each day by NAS activity number.
- d. Test and/or control activities performed with results and references to specifications/plan requirements. The control phase should be identified (Preparatory, Initial, Follow-up). List deficiencies noted along with corrective action.
- e. Material received with statement as to its acceptability and storage.

- f. Submittals reviewed, with contract reference, by whom, and action taken.
- g. Off-site surveillance activities, including actions taken.
- h. Job safety evaluations stating what was checked, results, and instructions or corrective actions.
- i. Instructions given/received and conflicts in plans and/or specifications.
- j. Contractor's verification statement.
- k. These records shall indicate a description of trades working on the project; the number of personnel working; weather conditions encountered; and any delays encountered. These records shall cover both conforming and deficient features and shall include a statement that equipment and materials incorporated in the work and workmanship comply with the contract. The original and one copy of these records in report form shall be furnished to the Government the first workday following the report, except that reports need not be submitted for days on which no work is performed. As a minimum, one report shall be prepared and submitted for every seven days of no work and on the last day of a no work period. All calendar days shall be accounted for throughout the life of the contract. The first report following a day of no work shall be for that day only. Reports shall be signed and dated by the CQC system manager. The report from the CQC system manager shall include copies of test reports and copies of reports prepared by all subordinate quality control personnel.

### 3.8 SAMPLE FORMS

Sample forms are enclosed at the end of this section.

### 3.9 NOTIFICATION OF NONCOMPLIANCE

The Contracting Officer will notify the Contractor of any detected noncompliance with the foregoing requirements. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor at the site of the work, shall be deemed sufficient for the purpose of notification. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

## DAILY CONSTRUCTION QUALITY CONTROL REPORT

Date: Report No.

Contract No.:

Description and Location of Work:

WEATHER: (Clear) (P. Cloudy) (Cloudy); Temperature: Min; Max;

Rainfall Inches

Contractor/Subcontractors and Area of Responsibility with Labor Count for Each:

a.

b.

c.

d.

Equipment Data: (Indicate items of construction equipment, other than hand tools, at the jobsite, and whether or not used.)

1. Work Performed Today: (Indicate location and description of work performed. Refer to work performed by prime and/or subcontractors by letter in table above.)

2. Results of Surveillance: (Include satisfactory work completed, or deficiencies with action to be taken.)

a. Preparatory Inspection:

b. Initial Inspection:

c. Followup Inspections:

3. Test Required by Plans and/or Specifications Performed and Results of Tests:

4. Verbal Instructions Received: (List any instructions given by Government personnel on construction deficiencies, retesting required, etc., with action to be taken.)

5. Remarks: (Cover any conflicts in plans, specifications, or instructions or any delay to the job attributable to weather conditions.)

6. Results of Safety Inspection: (Include safety violations and corrective actions taken.)

Contractor's Inspector

CONTRACTOR'S VERIFICATION: The above report is complete and correct and all material and equipment used and work performed during this reporting period are in compliance with the contract plans and specifications except as noted above.

Contractor's Approved Authorized Representative

## PREPARATORY INSPECTION CHECKLIST

Contract No.:

Date:

Title:

Specs Section:

MAJOR DEFINABLE SEGMENT OF WORK:

A. PERSONNEL PRESENT:

NAME

POSITION

COMPANY

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

(List additional personnel on reverse side.)

B. TRANSMITTALS INVOLVED:

CONTRACTOR OR NUMBER & ITEM  
APPROVAL

CODE

GOVERNMENT

1.

2.

3.

4.

5.

6.

B-I. Have all items involved been approved?

Yes

No

B-II. What items have not been approved?

ITEM

STATUS

1.

2.

3.

4.

5.

C. ARE ALL MATERIALS ON HAND?

Yes

No

C-I. Are all materials on hand in accordance with approvals? Yes No

C-II. Items not on hand or not in accordance with transmittals:

1.

2.

3.

4.

D. TESTS REQUIRED IN ACCORDANCE WITH CONTRACT REQUIREMENTS:

TEST

PARAGRAPH

1.

2.

3.

E. ACCIDENT PREVENTION PREPLANNING - HAZARD CONTROL MEASURES:

E-I. Applicable Outlines (Attach Completed Copies):

1.

2.

3.

4.

5.

E-II. Operational Equipment Checklists:



ATTACHED FOR:

- 1.
- 2.
- 3.

ON FILE FOR:

- 1.
- 2.
- 3.

Quality Control - Prime Contractor

Quality Control - Work Involved

## INITIAL INSPECTION CHECKLIST

Contract No.:

Date:

Description and Location of Work Inspected:

Specs Section:

## REFERENCE CONTRACT DRAWINGS:

## A. PERSONNEL PRESENT:

	NAME	POSITION	COMPANY
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

B. MATERIALS BEING USED ARE IN STRICT COMPLIANCE WITH THE CONTRACT PLANS  
AND SPECIFICATIONS.                      Yes                      No    IF NOT, EXPLAIN:

C. PROCEDURES AND/OR WORK METHODS WITNESSED ARE IN STRICT COMPLIANCE WITH  
THE REQUIREMENTS OF THE CONTRACT SPECIFICATIONS.                      Yes                      No    IF NOT,  
EXPLAIN:

D. WORKMANSHIP IS ACCEPTABLE.                      Yes                      No    STATE AREAS WHERE  
IMPROVEMENT IS NEEDED:

E. SAFETY VIOLATIONS AND CORRECTION ACTION TAKEN:

Quality Control Representative

--End of Section--

## SECTION 01500

## CONSTRUCTION FACILITIES

## 1 GENERAL

## 1.1 UTILITY SERVICES (APR 1984)

No utilities will be furnished by the Government.

## 1.2 IDENTIFICATION OF EMPLOYEES (APR 1985)

The Contractor shall furnish identification to each employee as directed by the Contracting Officer. Upon the release of any employee, the identification shall be delivered to the Contracting Officer for cancellation.

## 1.3 MOWING

Grass and weedy vegetation within the areas utilized by the Contractor, including work areas, administrative areas, and storage areas, shall be kept mowed to control vegetative growth. Vegetation shall be mowed to a height of 3 inches when it reaches a height of 6 inches. Mowing shall be done with a rotary mower. Mowing shall be done during periods and in such a manner that the soil and grass will not be damaged. Areas adjacent to trees, shrubs, fences, buildings, etc. shall be hand trimmed. The Government may, after notice to the Contractor and at the discretion of the Contracting Officer, mow the Contractor's areas at any time the vegetation height exceeds 6 inches and all costs incurred by the Government for performing such work will be deducted from the contract.

## 1.4 STAGING AREA

The Contractor may establish a staging area on the project site at a location designated by the Contracting Officer or as shown on the plans.

## 2 PRODUCTS (NOT APPLICABLE)

## 3 EXECUTION (NOT APPLICABLE)

--End of Section--

## SECTION 01561

## ENVIRONMENTAL PROTECTION

## 1 GENERAL

## 1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

## CODE OF FEDERAL REGULATIONS (CFR)

40 CFR 262

Subpart D, Recordkeeping and Reporting

## ENVIRONMENTAL PROTECTION AGENCY (EPA)

EPAPUB

(1992) NPDES (National Pollution Discharge Elimination System) General Permits for Storm Water Discharges from Construction Sites

## 1.2 DEFINITIONS

For the purpose of this specification, environmental pollution and damage is defined as the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance to man; or degrade the utility of the environment for aesthetic, cultural and/or historical purposes. The control of environmental pollution and damage requires consideration of air, water, and land, and includes management of visual aesthetics, noise, solid waste, radiant energy and radioactive materials, as well as other pollutants.

## 1.3 SUBMITTALS

Government approval is required for submittals with a "GA" designation; submittals having a "FIO" designation are for information only. The following shall be submitted in accordance with Section 01300 SUBMITTALS:

SD-01 Data

Environmental Protection Plan; GA.

The environmental protection plan shall address all items in the paragraph ENVIRONMENTAL PROTECTION REQUIREMENTS and shall be submitted with the Quality Control Plan as described in Section 01440.

## 1.4 ENVIRONMENTAL PROTECTION REQUIREMENTS

Provide and maintain, during the life of the contract, environmental protection. Plan for and provide environmental protective measures to control pollution that develops during normal construction practice. Plan for and provide environmental protective measures required to correct conditions that develop during the construction of permanent or temporary environmental features associated with the project. Comply with Federal,

State, and local regulations pertaining to the environment, including but not limited to water, air, and noise pollution.

#### 1.4.1 Environmental Protection Plan

The Contractor shall submit in writing, with drawings, an Environmental Protection Plan and meet with representatives of the Contracting Officer to develop mutual understanding relative to compliance with this provision and administration of the environmental protection program. Approval of the Contractor's plan will not relieve the Contractor of his responsibility for adequate and continuing control of pollutants and other environmental protection measures. The Government reserves the right to make changes in his environmental protection plan and operations as necessary to maintain satisfactory environmental protection performance. The environmental protection plan shall include but not be limited to the following:

##### 1.4.1.1 Laws, Regulations, and Permits

Except for a Notice of Intent (NOI) required for obtaining a permit for storm water discharge which will be obtained by the Corps of Engineers, the Contractor shall prepare a list of Federal, State and local laws, regulations, and permits concerning environmental protection, pollution control and abatement that are applicable to the Contractor's proposed operations and the requirements imposed by those laws, regulations and permits.

##### 1.4.1.2 Procedures

The Contractor shall implement procedures to provide the required environmental protection and to comply with the applicable laws and regulations. The Contractor shall set out the procedures to be followed to correct pollution of the environment due to accident, natural causes or failure to follow the procedures set out in accordance with the environmental protection plan.

##### 1.4.1.3 Permit or License

The Contractor shall obtain all needed permits or licenses for disposal of solid, liquid, chemical, and other waste generated as a result of this contract.

##### 1.4.1.4 Drawings

The Contractor shall include drawings showing locations of any proposed temporary excavations or embankments for haul roads, stream crossings, material storage areas, structures, sanitary facilities, stockpiles of earth materials, and disposal areas for excess earth material and unsatisfactory earth materials.

##### 1.4.1.5 Environmental Monitoring Plans

The Contractor shall include environmental monitoring plans for the job site which incorporate land, water, air and noise monitoring.

##### 1.4.1.6 Method and Location of Waste and Debris Disposal

The Contractor shall include the location for disposal of waste and debris.

#### 1.4.1.7 Preplanning

Meetings of the Contractor with Contracting Officer or his authorized representative as specified in the paragraph MEETINGS, for the purpose of preplanning prevention of environmental damage.

#### 1.4.1.8 Method of Training

The Contractor shall include a proposed method of training all new employees in environmental protection before they commence working project.

### 1.5 MEETINGS

The Contractor shall meet with representatives of the Contracting Officer to develop mutual understanding relative to compliance with this section of the specifications and administration of the environment protection program. The Contractor shall be prepared to discuss the program in conferences convened by the Contracting Officer before starting work on each major phase of operation. Approval of the Contractor's plan for environmental protection will not relieve the Contractor of his responsibility for adequate and continuing control of pollutants and protection of environmental features. All Contractor personnel shall be required to attend.

### 1.6 SUBCONTRACTORS

Assurance of compliance with this section by subcontractors will be the responsibility of the Contractor.

### 1.7 REGULATORY REQUIREMENTS

The Contractor shall comply with all federal, state, and local regulatory and statutory requirements.

## 2 PRODUCTS (NOT APPLICABLE)

## 3 EXECUTION

### 3.1 PROTECTION OF ENVIRONMENTAL RESOURCES

The environmental resources within the project boundaries and those affected outside the limits of permanent work under this contract shall be protected during the entire period of this contract. The Contractor shall confine his activities to areas defined by the contract drawings or specifications. Environmental protection shall be as stated in the following subparagraphs.

#### 3.1.1 Protection of Land Resources

Prior to the beginning of any construction, the Contracting Officer will identify all land resources to be preserved within the Contractor's work area. The Contractor shall not remove, cut, deface, injure, or destroy land resources including trees, shrubs, vines, grasses, topsoil, and land forms without special permission from the Contracting Officer. No ropes, cables, or guys shall be fastened to or attached to any trees for anchorage unless specifically authorized. Where such special emergency use is permitted, the

Contractor shall provide effective protection for land and vegetation resources at all times as defined in the following subparagraphs.

#### 3.1.1.1 Inspections

Weekly inspections of construction sites shall be conducted by the Contractor to insure that the various controls and components of the various plans required by this section are in place. In addition, the Contractor shall make an inspection within 24 hours following a 1/2 inch or greater rainfall event to insure that the controls are working adequately and have not been impacted by the rainfall event.

Within two business days after a weekly inspection has been performed, a written report shall be submitted identifying any deficiencies and how they were corrected.

#### 3.1.1.2 Location of Contractor Facilities

The Contractor's field offices, staging areas, and temporary buildings shall be placed in areas designated on the contract drawings and approved by the Contracting Officer. Temporary movement or relocation of Contractor facilities shall be made only on approval by the Contracting Officer.

#### 3.1.1.3 Disposal of Solid Wastes

Solid wastes (excluding clearing debris) shall be placed in containers which are emptied on a regular schedule. All handling and disposal shall be conducted to prevent contamination.

#### 3.1.1.4 Disposal of Discarded Materials

Discarded materials other than those which can be included in the solid waste category shall be handled as directed by the Contracting Officer.

### 3.2 PROTECTION OF WATER RESOURCES

The Contractor shall keep construction activities under surveillance, management and control to avoid pollution of surface and ground waters. Special management techniques as set out below shall be implemented to control water pollution by the listed construction activities which are included in this contract.

#### 3.2.1 Monitoring of Water Areas Affected by Construction Activities

Monitoring of water areas affected by construction activities shall be the responsibility of the Contractor. All water areas affected by construction activities shall be monitored by the Contractor.

### 3.3 PROTECTION OF AIR RESOURCES

The Contractor shall keep construction activities under surveillance, management and control to minimize pollution of air resources. All activities, equipment, processes, and work operated or performed by the Contractor in accomplishing the specified construction shall be in strict accordance with all Federal and State of Oklahoma emission and performance laws and standards. Special management techniques as set out below shall be

implemented to control air pollution by the construction activities which are included in the contract.

#### 3.3.1 Particulates

Dust particles, aerosols, and gaseous by-products from all construction activities, processing and preparation of materials shall be controlled at all times, including weekends, holidays and hours when work is not in progress. The Contractor shall maintain all excavations, stockpiles, haul roads, permanent and temporary access roads, spoil areas, and all other work areas within or outside the project boundaries free from particulates which would cause the air pollution standards mentioned in the paragraph "PROTECTION OF AIR RESOURCES" to be exceeded

#### 3.3.2 Hydrocarbons and Carbon Monoxide

Hydrocarbons and carbon monoxide emissions from equipment shall be controlled to Federal and State allowable limits at all times.

#### 3.3.3 Odors

Odors shall be controlled at all times for all construction activities, processing and preparation of materials.

#### 3.3.4 Monitoring Air Quality

Monitoring of air quality shall be the responsibility of the Contractor. All air areas affected by the construction activities shall be monitored by the Contractor.

### 3.4 TESTS

The Contractor shall establish and maintain quality control for environmental protection operations to assure compliance with contract requirements and maintain records of his quality control for all construction operations, including, but not limited to the following items. The Contractor shall record on daily reports any problems in complying with laws, regulations and ordinances and corrective action taken. Three copies of these records and tests, as well as the records of corrective action taken, shall be furnished the Government as directed by the Contracting Officer.

#### 3.4.1 Laws, Regulations and Ordinances

The Contractor must comply with all Federal, State, and local laws, regulations and ordinances concerning pollution control.

#### 3.4.2 Protection of Land Resources

The Contractor shall prevent landscape defacement and provide post-construction clean-up.

#### 3.4.3 Protection of Water Resources

The Contractor shall prevent the contamination of lakes, ditches, or other bodies of water with harmful chemicals; the Contractor shall dispose of waste materials; and the Contractor shall provide erosion control.



#### 3.4.4 Pollution Control Facilities

The Contractor shall provide for the maintenance of pollution control facilities. The Contractor shall conduct a training course on the maintenance of pollution control facilities.

#### 3.5 INSPECTION

The Contracting Officer will notify the Contractor in writing of any observed noncompliance with any of the Contractor's required plans. The Contractor shall, after receipt of such notice, inform the Contracting Officer of proposed corrective action and take such action as may be approved. If the Contractor fails to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No time extensions will be granted or costs or damages allowed to the Contractor for any such suspension.

#### 3.6 POST CONSTRUCTION CLEANUP

The Contractor shall clean up all area(s) used for construction.

#### 3.7 RESTORATION OF LANDSCAPE DAMAGE

The Contractor shall restore all landscape features damaged or destroyed during construction operations outside the limits of the approved work areas. Such restoration shall be in accordance with the plans submitted for approval by the Contracting Officer.

#### 3.8 MAINTENANCE OF POLLUTION FACILITIES

The Contractor shall maintain all constructed facilities and temporary pollution control devices for the duration of the contract or for that length of time construction activities create the particular pollutant.

#### 3.9 RECORD KEEPING

During construction, all records shall be retained onsite. Inspection reports, and modifications of the plans required shall be retained for 3 years following construction.

--End of Section--

## SECTION 01580

## BULLETIN BOARD

## 1 GENERAL

## 1.1 GENERAL

Immediately upon beginning of work under this contract, the Contractor shall accomplish the work covered in this section. Locations of the bulletin board shall be as determined by the Contracting Officer. Upon completion of work under this contract, the sign shall be removed from the jobsite and shall remain the property of the Contractor.

## 2 PRODUCTS

## 2.1 BULLETIN BOARD

Bulletin board shall be a weatherproof, glass-covered board not less than 36 by 48 inches in size, for displaying the Equal Employment Opportunity Poster, a copy of the wage decision contained in the contract, Wage Rate Information Poster, and other information approved by the Contracting Officer. The bulletin board shall be located at the site of work in a conspicuous place easily accessible to all employees. Legible copies of the above items shall be displayed until work under the contract is complete.

## 3 EXECUTION (NOT APPLICABLE)

All Construction Project Identification signs and Safety Performance signs are to be fabricated and installed as described below. The signs are to be erected at a location designated by the contracting officer and shall conform to size, format, and typographic standards.

The sign panels are to be fabricated from .75" High Density Overlay Plywood.

Sign graphics to be prepared on a white non-reflective vinyl film with positionable adhesive backing.

All graphics except for the Communications Red background with Corps signature on the project sign are to die-cut or computer cut nonreflective vinyl, pre-spaced legends prepared in the sizes and typefaces specified and applied to the background panel following the graphic formats shown.

The 2' x 4' Communications Red panel (to match PMS-032) with full Corps signature (reverse version) is to be screen printed on the white background identification of the District / Division may be applied under the signature with white cut vinyl letters prepared to Corps standards

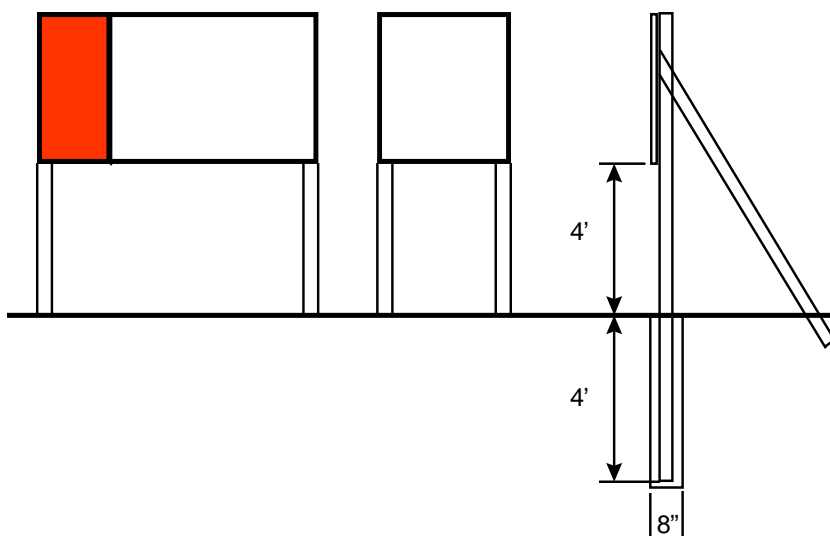
Drill and insert six (6) .375 T-nuts from the front face of the HDO sign panel. Position holes as shown. Flange of T-nut to be flush with sign face

Apply Graphic panel to prepared HDO plywood panel following manufactures instructions

Sign uprights to be structural grade 4" x 4" treated Douglas Fur or Southern Yellow Pine. No 1 or better. Post to be 12' long Drill six (6) .375" mounting holes in uprights to align with T-nuts in sign panel. Countersink (5") back of hole to accept socket head cap screw ( 4" x .375" ).

Assemble sign panel and uprights. Imbed assembled sign panel and uprights in 4' hole. Local soil conditions and/or wind loading may require bolting additional 2" x 4" struts on inside face of uprights to reinforce installation shown.

Shown below the mounting diagram is a panel layout grid with spaces provided for project information. Photocopy this page and use as a worksheet when preparing sign Legend orders.



#### Construction Project Sign Legend Group 1

1 \_\_\_\_\_

2 \_\_\_\_\_

#### Legend Group 2 Division/District Names

1 \_\_\_\_\_

2 \_\_\_\_\_

#### Legend Group 3 Project Title

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

#### Legend Group 4 Facility Name

1 \_\_\_\_\_

2 \_\_\_\_\_

#### Legend Group 5a: Contractor/A&E

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

4 \_\_\_\_\_

5 \_\_\_\_\_

#### Legend Group 5b: Contractor/A&E

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

4 \_\_\_\_\_

5 \_\_\_\_\_

#### Safety Performance Sign Legend Group 1: Project Title

1 \_\_\_\_\_

2 \_\_\_\_\_

#### Legend Group 2: Contractor/A&E

1 \_\_\_\_\_

2 \_\_\_\_\_

## SECTION 01700

## CONTRACT CLOSEOUT

## 1 GENERAL

## 1.1 WARRANTY OF CONSTRUCTION (APR 1984)

## 1.1.1 General

See Paragraph "Warranty of Construction" in Section 00800 - SPECIAL CONTRACT REQUIREMENTS

## 1.2 PREWARRANTY CONFERENCE

Prior to contract completion and at a time designated by the Contracting Officer or his representative, the Contractor shall meet with the Contracting Officer to develop a mutual understanding with respect to the requirements of Paragraph: WARRANTY OF CONSTRUCTION. The Contracting Officer shall establish communication procedures for Contractor notification of warranty defects, priorities with respect to the type of defect and reasonable time required for Contractor response, and other details deemed necessary by the Contracting Officer for the execution of the construction warranty.

## 1.3 AS-BUILT DRAWINGS

## 1.3.1 General

The Contractor shall be responsible to prepare and maintain the as-built drawings for this project. "As-built" drawings are a specific and distinct deliverable item under the terms of the contract. Failure to maintain and deliver these drawings will be treated by the Government in a manner similar to the failure to provide a specified item of construction material or equipment.

## 1.3.2 As-Built Drawing Components

There shall be three (3) components to the as-built drawings:

- a. Working as-built drawings;
- b. Final as-built drawings (dimensionally stable mylar film);
- c. Digital as-built drawings (digital files saved to approved media).

## 1.3.3 Scope of As-Built Drawings.

The as-built drawings shall be a record of the construction as installed and completed by the Contractor. They shall include the information shown on the contract set of drawings and a record of deviations, modifications, or changes from those drawings, however minor, which were incorporated into the work, additional work not appearing on the contract drawings, and changes which are made after final inspection of the work. Level of detail provided on as-built drawings shall match that of the original contract drawings. If additional work changes the as-built conditions after submission of the as-built drawings, the Contractor shall furnish revised or additional drawings to depict as-built conditions. Critical shop drawings or other submittal items, which exceed the level of detail of the as-built drawings and which are needed for the proper operation and maintenance of the project, shall be provided in Operations and Maintenance Manuals.

#### 1.3.4 Working As-Built Drawings

The Contractor shall maintain two sets of paper prints which shall show the as-built conditions and which shall be kept current and available on the jobsite at all times. One set shall be maintained in the Contractor's on-site office, and the second set will be maintained in the Corps of Engineers' Resident Office. Changes from the contract plans which are made in the work or additional information uncovered in the course of construction shall be accurately and neatly recorded as they occur by means of details and notes. The as-built marked prints shall be jointly inspected for accuracy and completeness by the Contracting Officer and the Contractor prior to submission of each monthly pay estimate. A representative of the Contractor and a representative of the government shall each sign and date the coversheet of the record drawings when reviewed. Failure to submit the working as-builts for review may be considered as an incomplete pay estimate. The drawings shall show the following information, but not be limited thereto:

- a. The location and description of utility lines or other installations of any kind or description known to exist within the construction area. Exterior utilities shall be located in both the horizontal and vertical planes. Dimensions shall be within an accuracy of approximately 100mm or 4 inches. Vertical location shall be referenced to finished grade or floor level and the horizontal location referenced to a permanent structure such as the face of a building or street curb.
- b. The location and dimensions of changes within the building or structure. Accuracy of dimensions will match the level of accuracy of the original contract drawings. Items depicted symbolically shall use the same symbology of the original drawings. Items depicted on the original drawings without dimensions shall be shown in their approximate actual "as-constructed" location.
- c. Correct grade or alignment of roads, structures, or utilities if changes were made from contract plans.
- d. Correct elevations if changes were made in site grading.
- e. Changes in details of design or additional information obtained from shop drawings prepared or furnished by the Contractor. Information incorporated into as-built drawings shall be at a level of detail consistent with the original drawings.
- f. The topography and grades of drainage constructed or affected as a part of the construction.
- g. Changes or modifications resulting from the final inspection.
- h. Where contract drawings or specifications allow options, the option selected for construction shall be shown on the as-built drawings.
- i. Working as-built drawings of each drawing shall have the words "DRAWING OF WORK AS-BUILT" in letters at least 3/16-inch high placed below the title block between the border and the trim line. The date of completion and the words "REVISED AS-BUILT" shall be placed in the revision block above the latest existing revision notation.
- j. The title block for additional as-built drawings shall be similar to that used on the original drawings.

### 1.3.5 Final Working As-Built Prints for Review and Approval

Two copies of the working as-built marked prints shall be delivered to the Contracting Officer at the time of final inspection for his review and approval. Upon approval, one copy of the as-built marked prints will be returned to the Contractor. If upon review, the drawings are found to contain errors or omissions, they will be returned to the Contractor for corrections. The Contractor will complete the corrections and return the drawings to the Contracting Officer within 10 calendar days.

### 1.3.6 Final Drawings (CAD)

The original drawings have been prepared by Computer Aided Drafting (CAD). These digital files will be provided to the Contractor upon request. Upon approval of the working as-built prints, the Contractor shall modify the original CAD drawing files to bring them into agreement with the working as-built prints. If additional drawings are required, they shall be prepared in the MicroStation format. [The Graphic and Data Base standards developed by Tinker Air Force Base shall be followed to the greatest extent possible. A documentation handbook shall be submitted with the database. The handbook shall contain a description of the database, its naming conventions, layering schemes, and all other pertinent information needed to construct and use the database.] The Contractor shall submit final as-built CAD drawings in MicroStation Version 5.0.95 or later format.

#### 1.3.6.1 Media

Digital Data Format shall be as listed below in order of preference.

1. 5-1/4" Read/Write (R/W) Compact Disc (CD) (650, IBM compatible format) (non-compressed).
2. Bernoulli Removable Hard Disk utilizing native file format (non-compressed)(40mb or larger, IBM compatible format)
3. 3.5-in. High-density diskettes(1.44mb) utilizing Windows Backup or Pkzip software.

#### 1.3.6.2 Draftsmanship

Only personnel proficient in the preparation of digital engineering drawings to standards satisfactory and acceptable to the Government shall be employed to modify the original contract drawings or prepare additional new drawings. All additions and corrections shall be neat, clean, and legible and shall match the adjacent existing linework and lettering being annotated in type, density, size, and style. The Contracting Officer will review all as-built drawings for accuracy and conformance to the above specified drafting standards. The Contractor shall make all corrections, changes, additions, and deletions required to meet these standards.

- a. Final as-built revisions of each drawing shall have the words "DRAWING OF WORK AS-BUILT" in letters at least 3/16 inch 7 mm high placed below the title block between the border and the trim line. The date of completion and the words "REVISED AS-BUILT" shall be placed in the revision block above the latest existing revision notation. All marking highlighting previous revisions shall be removed.
- b. The title block for additional as-built drawings shall be similar to that used on the original drawings.

### 1.3.7 Final Submittal

Not later than 60 days after the contract completion date, the Contractor shall submit to the Contracting Officer two sets of final as-built drawings on acceptable media as described in paragraph MEDIA above together with one set of approved working as-built marked-up prints, one set of as-built reproducible drawings (mylar), and one set of blue line prints, which will become the property of the Government upon final approval. Format for final as-built drawings shall be as specified in the paragraph FINAL DRAWINGS (CAD) above. Approval and acceptance of final as-built drawings shall be accomplished before final payment is made to the Contractor.

### 1.4 PAYMENT VALUES FOR AS-BUILT DRAWINGS (SWD LTR 8/2/90 & MEMO ES-Q DTD 1 JUN 94)

#### 1.4.1 As-Built Drawings

The estimated value of as-built drawings is considered by the Government to be 6,800. Payments will be made for this work only upon receipt and approval of final as-built drawings as required in paragraph "As-Built Drawings" above.

### 2 PRODUCTS (NOT APPLICABLE)

### 3 EXECUTION (NOT APPLICABLE)

--End of Section--

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## SECTION 02000

## WORK COVERED UNDER STATE STANDARD SPECIFICATIONS

## 1 GENERAL

## 1.1 SCOPE

This section covers work done in accordance with the 1990 edition of the "Standard Specifications for State Road and Bridge Construction," Edition 1990, as published by the Kansas Department of Transportation, together with the Special Technical Provisions included below.

These Special Technical Provisions shall govern over the Standard Specifications whenever in conflict therewith.

The foregoing Standard Specifications are incorporated herein by reference only. For copies of the 1990 Standard Specifications contact:

Kansas Department of Transportation  
Department of Administration  
Division of Printing  
Docking State Office Building  
Topeka, Kansas 66612  
785-296-3585

The Contractor shall provide to the Contracting Officer a minimum of two weeks prior to beginning work a construction schedule for the project.

The Contractor shall comply with all requirements of the latest version of EM 385-1-1, Safety and Health Requirements Manual, and OSHA safety regulation Title 29 Code of Federal Regulations.

The Contractor shall cease construction activities a minimum of two days prior to a legal federal holiday and shall not resume construction for a minimum of two days after the holiday, unless otherwise directed by the Contracting Officer. The Contractor shall leave the road in such condition during the holiday period that two-way traffic flow is not restricted. Appropriate traffic control signs shall be posted during the holiday period.

## 1.2 SPECIAL TECHNICAL PROVISIONS FOR DIVISION 100 - GENERAL CLAUSES AND COVENANTS

The following requirements shall supplement, or in case of conflict, shall supersede applicable subsections of the Standard Specifications.

## 1.2.1 SECTION 101 - DEFINITION OF TERMS

## 1.2.1.1 Subsections to be Deleted

101.02, 101.03, 101.04, 101.05, 101.06, 101.10, 101.11, 101.12, 101.14, 101.15, 101.16, 101.17, 101.18, 101.25, 101.27, 101.35, 101.37, 101.38, 101.42, 101.43, 101.47, 101.48, 101.49, 101.50, 101.63, 101.71, 101.73, and 101.77



## 1.2.1.2 Subsections to be Revised

## 1.2.1.2.1 Subsections 101.22. DEPARTMENT, 101.58. SECRETARY, and 101.65. STATE.

The terms "Department," "Secretary," or "State" shall be construed to mean the Government.

## 1.2.1.2.2 Subsections 101.24. ENGINEER, 101.28. FIELD ENGINEER, 101.33 INSPECTOR.

The terms "Engineer," "Field Engineer," and "Inspector" shall be construed to mean the Contracting Officer, and shall include his duly appointed successor or his authorized representative.

## 1.2.1.2.3 Subsection 101.36. LABORATORY

The term "Laboratory" shall be construed to mean any testing laboratory which may be designated by the Contracting Officer.

## 1.2.1.2.4 Subsection 101.45. PLANS.

The term "Plans" shall be construed to mean the contract drawings enumerated or referenced in the SPECIAL CLAUSES of the specifications.

## 1.2.1.2.5 Subsections 101.52. RIGHT-OF-WAY.

The "Right-of-Way" shall be construed to mean the lands secured and provided by the Government for the purpose of construction and maintenance of roadway and appurtenances or for obtaining material therefor.

## 1.2.1.2.6 Subsection 101.61. SPECIAL PROVISIONS AND PROJECT SPECIAL PROVISIONS.

Change the title of this subsection to "SPECIAL TECHNICAL PROVISIONS."

## 1.2.2 SECTIONS 102, 103, 104, 105, and 108.

Delete these sections in their entirety.

## 1.2.3 SECTION 106. CONTROL OF MATERIALS.

With the exception of subsections 106.01, 106.05, 106.07, and 106.08, delete this section.

## 1.2.4 SECTION 107. LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC.

With the exception of subsections 107.09, 107.10, and 107.15, delete this section.

## 1.2.5 SECTION 109. MEASUREMENT AND PAYMENT.

With the exception of subsection 109.01, delete this section.

## 1.2.5.1 Subsection 109.01. MEASUREMENT OF QUANTITIES.

Delete the 10th, 11th, 12th, 22nd, 29th, and 31st paragraphs of this subsection.

1.3 SPECIAL TECHNICAL PROVISIONS FOR DIVISIONS 200 - 900.

In the paragraphs entitled DESCRIPTION, delete all entries under the heading "BID ITEMS." Bid items shall be as described in the subsections METHOD OF MEASUREMENT and BASIS OF PAYMENT.

SPECIAL TECHNICAL PROVISIONS  
FOR  
SECTION 300 - BASES

The following requirements shall supplement, or in cases of conflict, shall supersede applicable sections or portions thereof of the Standard Specifications.

1. SECTION 301 - GENERAL REQUIREMENTS FOR BASES. Subsection 301.02(b): delete this subsection.

2. SECTION 303 - AGGREGATE BASE:

2.1 Subsection 303.01: Delete this subsection and substitute the following:

"303.01. DESCRIPTION. This work shall consist of furnishing and placing one or more courses of AB-3 aggregates on a prepared subgrade in accordance with these specifications and in reasonably close proximity with the lines, thickness, and typical cross sections shown on the drawings or established by the Contracting Officer. Aggregate base shall be blended by plant mixing. During mixing, water shall be added to control moisture within plus or minus 2 percent of the optimum moisture. The base material shall be delivered and placed within 6 hours after mixing."

2.2 Subsection 303.04(a): Delete.

2.3 Subsection 303.04(c): Aggregate base material shall be placed by an approved pavement laydown machine or a Jersey spreader box attached to the front of a crawler tractor.

2.4 Subsection 303.04(d): Delete the 4<sup>th</sup> paragraph of this subsection and substitute the following:

"(d) Shaping and Compaction. Compaction of each layer shall continue until a density of not less than 95 percent of maximum dry density as determined by AASHTO T-180 Method D has been achieved. Slush rolling will not be permitted. The surface of each compaction layer shall be maintained during the compaction operations in such a manner that a uniform texture is produced and the aggregates firmly keyed. Water shall be uniformly applied over the base materials during compaction in the amount necessary for proper consolidation. If in-place material after compaction does not comply with the specified Atterburg limits, depth, gradation, or moisture-density relationship, and the moisture content cannot be corrected by sprinkling or air drying in place, the materials shall be removed and replaced. Mechanical manipulation of the aggregate base on the shoulder, removing materials, or adding material to the compacted surface to comply with the thickness requirements will not be allowed.

2.5 Subsection 303.04 and 303.05: Delete these subsections and substitute the following:

"303.04. METHOD OF MEASUREMENT AND PAYMENT. No separate measurement or payment will be made for aggregate base course used in the construction of the downstream crest repair, and all work associated with this item shall be considered subsidiary to the bid item " DOWNSTREAM CREST REPAIR", which payment shall be considered as full compensation for all labor, materials, equipment, and incidentals to complete the work as specified.

SPECIAL TECHNICAL PROVISIONS  
FOR  
SECTION 808 - GUARD RAIL AND GUIDE POSTS

1. Subsection 808.01: Delete this subsection and substitute the following:

"808.01 DESCRIPTION. This work shall consist of the removal of the existing guard rail and wood guide posts, the replacement of the existing posts, blockouts, and mounting hardware with new steel guide posts, blockouts, and mounting hardware, and the reinstallation of the existing guardrail. Guard rail shall be constructed on the alignment shown on the applicable typical section, or as directed by the Contracting Officer. Existing guard rail is of the Steel-W-Beam-Single type. Existing posts shall remain the property of the Government. Posts shall be sorted by the Contractor as serviceable and non-serviceable and shall be neatly stockpiled in the designated area as directed by the Contracting Officer." The Contractor shall dispose of posts that are judged non-serviceable. The posts shall be disposed according to State and Federal regulations.

2. Subsections 808.05 and 808.06: Delete these subsections and substitute the following:

"808.05. MEASUREMENT AND PAYMENT. No separate measurement or payment will be made for guard rail, guide posts, blockouts, or hardware and all work associated with this item shall be considered subsidiary to the bid item "DOWNSTREAM CREST REPAIR", which payment shall be considered as full compensation for all labor, materials, equipment, and incidentals to complete the work as specified."

SPECIAL TECHNICAL PROVISIONS  
FOR  
CONSTRUCTION TRAFFIC CONTROL

1. DESCRIPTION. Construction traffic control shall be provided by the Contractor for the duration of construction operations. The Contractor shall be responsible for the proper maintenance and operation of all traffic control devices for the duration of the project. The Contractor's proposed plan shall be in accordance with Part 6 of the Manual of Uniform Traffic Control Devices, latest edition and the Kansas Department of Transportation traffic control drawings. The proposed plan shall be presented to the Contracting Officer for approval. After approval has been obtained, the traffic control plan shall be in place prior to starting construction. One-way traffic controlled by flagmen or signal devices shall be maintained during the day when construction operations are ongoing, and two way traffic shall be re-established at any time that the Contractor's operations are halted for a significant period of time, i.e. nights, weekends, etc. The Contractor shall be responsible for coordinating with the Kansas Department of Transportation for any placement of signs or other traffic control devices off Government right-of-way.

2. MEASUREMENT AND PAYMENT. Payment for construction traffic control will be lump sum for the item "Construction Traffic Control" which price shall include all costs in connection therewith.

SPECIAL TECHNICAL PROVISIONS  
FOR  
REMOVING EXISTING BASE AND SURFACE

1. DESCRIPTION. The existing base and surface materials on the shoulder shall be removed as shown on the drawings and disposed of as directed by the Contracting Officer in the designated stockpile area. In the area of pavement removal, the existing asphaltic concrete pavement shall be vertically saw cut prior to removal. The thickness of the existing pavement has not been determined. The saw cut faces shall be maintained in such a manner as to facilitate the placement and compaction of new aggregate base course and asphaltic concrete surface course. Material shall be stockpiled in the designated area as directed by the Contracting Officer. The base and surface materials from the shoulder shall remain the property of the Government. The asphaltic concrete shall be disposed off of government land according to state and federal law.

2. MEASUREMENT AND PAYMENT. No separate measurement or payment will be made for removal of existing base and surface, and all work associated with this item shall be considered subsidiary to the bid item "DOWNSTREAM CREST REPAIR", which payment shall be considered as full compensation for all labor, materials, equipment, and incidentals to complete the work as specified.

SPECIAL TECHNICAL PROVISIONS  
FOR  
SUBGRADE SCARIFYING, SHAPING, AND COMPACTING

1. DESCRIPTION. The area shall be scarified to the width and depth shown on the drawings to the extent that not more than 5 percent of the material would be retained on a 3-inch sieve. After thorough scarifying the material shall be leveled and brought to the proper moisture content for compaction. The material shall be compacted by means of sheepsfoot or pneumatic-tired rollers or vibrating compactor to 95 percent of Standard Density (AASHTO T-99, Method D). The surface of the completed subgrade shall be shaped to the typical section as required in the drawings and satisfactorily maintained until the succeeding lift of material has been placed. If required, additional water shall be sprinkled on the completed subgrade to prevent cracking or raveling.

2. MEASUREMENT AND PAYMENT. No separate measurement or payment will be made for scarifying, shaping and compacting required in the downstream crest repair, and all work associated with this item shall be considered subsidiary to the bid item "DOWNSTREAM CREST REPAIR", which payment shall be considered as full compensation for all labor, materials, equipment, and incidentals to complete the work as specified.



SPECIAL TECHNICAL PROVISIONS  
FOR  
REMOVAL AND RESETTING OF SIGNS

1. DESCRIPTION. The Contractor shall remove and reset the existing information and regulatory signs. Any signs or posts damaged by the Contractor during removal and resetting of signs shall be replaced in kind by the Contractor and at his expense. Any additional signs removed by the Contractor shall be considered to be for his convenience and shall be reset at no additional cost to the Government.

2. MEASUREMENT AND PAYMENT. No separate measurement or payment will be made for removing and resetting signs, and all work associated with this item shall be considered subsidiary to the bid item "DOWNSTREAM CREST REPAIR", which payment shall be considered as full compensation for all labor, materials, equipment, and incidentals to complete the work as specified.

SPECIAL TECHNICAL PROVISIONS  
FOR  
DOWNSTREAM CREST REPAIR

1. DESCRIPTION. This work shall consist of the removal of existing shoulder material and replacement with aggregate base material, and removing and replacing a portion of the existing asphalt concrete pavement in accordance with these specifications and as shown on the drawings or as directed by the Contracting Officer.
2. MATERIALS. Aggregate base and guard rail materials shall be as specified in their respective sections of the specifications.
3. CONSTRUCTION REQUIREMENTS
  - 3.1 The existing surface, shoulder and base materials shall be removed and disposed of as required in the "Special Technical Provisions for Removing Existing Base and Surface".
  - 3.2 The subgrade shall be scarified, shaped and compacted as required in the "Special Technical Provisions for Subgrade Scarifying, Shaping and Compacting".
  - 3.3 The aggregate base course shall be constructed as shown in the typical section and as required in Section 303.
  - 3.4 The asphaltic concrete surface course shall be constructed as shown in the typical section and as required in Section 02554 of the project specifications.
  - 3.5 The guard rail and guide posts shall be removed and replaced as specified in Section 808.
  - 3.6 The edge and center line stripes shall be reestablished using pavement marking material that meets the requirements of Subsection 2207 Thermoplastic Reflectorized Pavement Marking Material.
4. MEASUREMENT AND PAYMENT. Measurement and payment for the work shall be by the linear foot of completed and accepted work at the unit price for the bid item "Downstream Crest Repair", which price shall be full compensation for all labor, materials, equipment and incidentals to complete the work as specified.

SPECIAL TECHNICAL PROVISIONS  
FOR  
QUALITY CONTROL SAMPLING AND TESTING

1. CONTRACTOR'S QUALITY CONTROL.

1.1 The Contractor shall inspect and test for compliance with contract requirements and record all inspections and tests of all materials and operations, including but not limited to the following:

- (1) Equipment.
- (2) Materials.
- (3) Construction methods.
- (4) Line, grade, and tolerances.

1.2 A copy of these records and tests as well as records of corrective actions taken will be furnished to the Government as directed by the Contracting Officer.

2. SAMPLING AND TESTING:

2.1 General. Samples shall be of the size as required by the particular test and shall be furnished at no additional cost to the Government. Except as otherwise specifically described below, all sampling and testing herein required or required by the State Standard Specifications and the Special Technical Provisions thereto, including furnishing the equipment and labor necessary to perform the tests, shall be performed by the Contractor at his expense. Except as otherwise specifically described below, all tests and test procedures to be used by the Contractor's quality control personnel in determining suitability of materials and operations shall be as described or referenced in the State Standard Specifications and the Special Technical Provisions. The frequency of tests specified in the following subparagraphs shall be considered the minimum, and where a frequency is not specified sufficient tests to assure compliance with the contract shall be performed. If any test indicates materials or methods do not comply with the contract, the frequency of testing shall be increased as directed until compliance has been obtained. AASHTO tests T-99 Method D and T-180 Method D shall be used as appropriate to determine the optimum moisture content and the maximum density of soils under this contract. Tests shall be performed by qualified personnel in an approved laboratory. Test results shall be provided to the Contracting Officer within two working days of the date the test was performed.

2.2 Government Sampling and Testing. During construction, materials will be sampled and tested as often as deemed necessary by the Contracting Officer at Government expense. Samples of a size as required by the Contracting Officer shall be furnished by the Contractor at his expense. This testing shall not relieve the Contractor of any quality control testing.

2.3 Scarified, Shaped and Recompacted Material. The scarified, shaped and recompacted material shall be tested for depth and density at a frequency of one test per 1000 square yards of in-place material at locations as directed by the Contracting Officer.

2.4 Aggregate Base Course. Samples for tests shall be obtained from in-place materials. Gradation and Atterburg Limits of base materials shall be determined at a frequency of one test for each 2000 square yards of material placed. Density and depth measurements of aggregate base shall be taken at the frequency of one test for every 500 feet of centerline length of shoulder.

2.5 No separate payment will be made for the Contractor's quality control work and all costs in connection therewith shall be considered subsidiary to the applicable item of work listed in the Bid Schedule.

SPECIAL TECHNICAL PROVISIONS  
FOR  
SECTION 905 - SODDING

Scope

This section covers the establishment of turf on all graded and disturbed areas that are the result of the Contractor's operations. Turf shall only be established by sodding according to the procedures and materials of this section. Sodding work shall be accomplished only when satisfactory results can be expected. When drought, excessive moisture, high winds, or other factors prevail to such an extent that satisfactory results are not likely to be obtained, the turfing operations shall stop. All turfing operations shall be conducted across slopes.

It shall be the responsibility of the Contractor to maintain the planted areas during the planting period. Contractor shall maintain the planted areas until October 1 of the year in which the planting occurs. Maintenance work shall be accomplished until a stand of grass is present. Maintenance shall consist of mowing and watering at the frequency directed by the Contracting Officer, replanting, maintaining existing grades, and repairing erosion damage. Areas on which an acceptable stand of grass is not present at the end of the maintenance period shall be maintained by the Contractor until an acceptable stand of grass is present at no additional cost to the Government.

-- End of Section --

## SECTION 02270

## SLOPE PROTECTION

## 1 GENERAL

## 1.1 SCOPE

This work shall consist of the removal of the existing materials to the depths and limits indicated on the drawings from the downstream slope of the embankment, and the furnishing and placing of rock slope protection on slopes, constructed at the locations and to the lines, grades and details shown on the plans or as directed by the Contracting Officer, and in accordance with this specification.

## 1.2 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation only.

## US ARMY CORPS OF ENGINEERS HANDBOOK FOR CONCRETE AND CEMENT

CRD-C 144 (1992) Standard Test Method for Resistance of Rock to Freezing and Thawing.

## AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)

ASTM C 88 (1998) Standard Test Method for Soundness of Aggregates by Use of Sodium Sulfate or Magnesium Sulfate

ASTM C 127 (1993e1) Standard Test Method for Specific Gravity and Absorption of Coarse Aggregate

ASTM C 131 (1996) Standard Test Method for Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine

ASTM C 136 (1996a) Standard Test Method for Sieve Analysis of Fine and Coarse Aggregates

## US ARMY CORPS OF ENGINEERS HANDBOOK FOR CONCRETE AND CEMENT

EM-1110-2-1906 (November 1097) Laboratory Soils Testing Reprint with Corrected Copies Incorporated 20 August 1986)

## 1.3 MEASUREMENT AND PAYMENT

## 1.3.1 Measurement

Measurement for removal of existing materials from the downstream slope of the embankment and placement of the slope protection material shall be by the square yard of completed and accepted work. The surface area of the repair shall be measured to the nearest 1/10 of a foot.

### 1.3.2 Payment

Payment shall be made at the contract price per cubic yard for the bid item "Slope Protection Repair", which price shall include all costs of removing the existing slope materials and hauling to the designated stockpile area, and furnishing, hauling, handling, and placing new slope protection materials as specified. No payment shall be made for excess thickness layers nor for material required to replace embankment or subgrade material lost by rain wash, wind erosion, or otherwise, except for additional material ordered in writing by the Contracting Officer.

### 1.4 SUBMITTALS

Government approval is required for submittals with a "GA" designation; submittals having an "FIO" designation are for information only. The following shall be submitted in accordance with Section 01300 - SUBMITTALS:

SD-14 Sample

Stone Materials; GA.

Samples of stone materials of each type.

## 2 PRODUCTS

### 2.1 MATERIALS

#### 2.1.1 General

Materials for the slope protection work shall be durable stone as approved by the Contracting Officer. Gypsum, anhydrite, chert, shale, and soft weathered rock will not be approved. The slope protection material shall consist of sand, gravel, or crushed stone. The material shall be composed of tough, durable particles, shall be reasonably free from thin, flat and elongated pieces, and shall contain no organic matter or soft, friable particles in quantities more than 5 percent of the total samples.

The sources from which the Contractor proposes to obtain material shall be selected well in advance of the time when the material shall be required in the work. Material sources shall be approved based on the ability of the material to meet the quality standards listed below. Approval of a source of material is not to be construed as approval of all material from that source. The right is reserved to reject materials from certain localized areas, zones, or strata when such materials are unsuitable as determined by the Contracting Officer.

#### 2.1.2 Quality

Suitable tests and service records shall be used to determine the acceptability of the stone protection materials. In the event that suitable test reports and a service record that are satisfactory to the Contracting Officer are not available, as in the case of newly operated sources, the material shall be subjected to such tests as are necessary to determine its acceptability for use in the work. Tests to which the materials may be subjected include petrographic analysis, specific gravity, abrasion, absorption, wetting and drying, freezing and thawing, and such other tests as may be considered necessary to demonstrate to the satisfaction of the Contracting Officer that the materials are acceptable for use in the work. One set of quality tests will be made by the

Government and at its expense to determine acceptability of the material. Any further testing required to determine material acceptability shall be at the Contractor's expense. Suitable test samples of stone shall be obtained by the Contractor under the direct supervision of the Contracting Officer. Test samples shall be submitted at least 60 days in advance of the time when the placing of the stone protection is expected to begin. Stone protection material shall not be delivered to the site of the work prior to approval of the test samples. The total overall weight of each sample of material proposed for slope protection material shall be approximately 100 pounds and representative pieces shall weigh not more than 25 pounds. After the award of the contract, the Contractor shall designate in writing only one source or one combination of sources from which he proposes to furnish stone protection materials. Tests and test values listed below are for job controls of slope protection stone and shall be used to determine the acceptability of stone being produced.

#### 2.1.2.1 Weight and Absorption

The minimum weight per solid cubic foot calculated from the bulk specific gravity (saturated surface-dry) of the sample determined in accordance with the procedure in ASTM C 127, shall be 150 pounds. The maximum absorption shall be 6 percent. Test samples shall be 1-1/2 inches to 2-1/2 inches in size.

#### 2.1.2.2 Soundness (Freezing and Thawing Test)

The loss of weight of stone after 20 cycles of freezing and thawing with a test specimen immersed in water shall be less than 15 percent. Each cycle shall consist of 16 hours freezing at temperature of 5 degrees F, and 8 hours thawing at temperature of 100 degrees F. The test specimens shall be prepared and tested in accordance with the requirements of CRD-C 144.

#### 2.1.2.3 Soundness (Magnesium Sulfate Test)

The loss of weight of stone after testing with 5 cycles of magnesium sulfate shall not exceed 18 percent. The tests shall be in accordance with the procedures designated in ASTM C 88. The tests shall be performed on 1-1/2 to 2-1/2 inch size aggregate.

#### 2.1.2.4 Resistance to Degradation

Stone shall be subjected to the Los Angeles Abrasion Test (ASTM C 131) and shall show a loss in weight of not more than 45 percent after 500 revolutions.

#### 2.1.2.5 Slope Protection Material Gradation

The material shall be well graded between the following prescribed limits:

<u>Sieve Designation (Inch)</u> <u>US Standard Square Mesh</u>	<u>Percent by Weight Passing</u> <u>6-Inch Protection Stone</u>
6	100
4	80-95
2	50-80
1	30-60
3/8	10-30
No. 4	0-10



### 3 EXECUTION

#### 3.1 FOUNDATION PREPARATION

Existing slope materials shall be removed to the depth and extents indicated on the drawings and stockpiled in the designated area. Areas on which protection stone is to be placed shall be trimmed and dressed to conform to cross sections shown on the drawings within an allowable tolerance of plus or minus 2 inches from the theoretical slope lines and grades. Where such areas are below the allowable minus tolerance limit they shall be brought to grade by filling with earth similar to the adjacent material. Immediately prior to placing the protection stone, the prepared base shall be inspected by the Contracting Officer and no material shall be placed thereon until that area has been approved.

#### 3.2 PROTECTION STONE

##### 3.2.1 General

Protection stone shall be placed within the limits shown on the drawings or as staked in the field.

##### 3.2.2 Placement

Stone protection material shall be spread uniformly on the prepared base in a satisfactory manner to the slope lines and grades indicated on the drawings or as directed. The stone shall be placed up the slope from the toe. Placing of material by methods which will tend to segregate particle sizes within the material shall not be permitted. The Contractor shall submit his proposed placement method for the review and approval of the Contracting Officer. Any damage to the surface of the base during placing of the material shall be repaired before proceeding with the work. Unless otherwise specified, compaction of the stone protection material shall not be required but the material shall be finished to present a reasonably even surface free from mounds or windrows. A tolerance of plus or minus 1 inch from the thickness indicated on the drawings shall be allowed in the finished surface of the material.

#### 3.3 QUALITY CONTROL

##### 3.3.1 Inspection

The Contractor shall inspect and test for compliance with contract requirements and record all inspections and tests of all materials and operations, including but not limited to the following:

- (1) Equipment.
- (2) Materials.
- (3) Construction methods.
- (4) Line, grade, and tolerance.

##### 3.3.2 Gradation Tests and Depth Checks

The in place gradation and depth of stone protection material shall be determined. Gradation shall be determined using the procedure described in ASTM C 136. The number of passing tests the Contractor will conduct will not exceed five. If any tests indicate the materials or workmanship do not

conform to the specifications the material shall be removed and replaced with stone meeting these specifications and the frequency of testing shall be increased until compliance has been obtained.

### 3.3.3 Government Sampling and Testing

During construction, stone protection materials shall be sampled and tested as often as deemed necessary by the Contracting Officer. Testing shall consist of in place gradations and quality tests on the placed and finished stone. The Contractor shall furnish two laborers as required to assist in the sampling and testing and shall be responsible for the satisfactory replacement of stone in the sampled area, all at no additional cost to the Government.

--End of Section --

## SECTION 02554

## BITUMINOUS SURFACE COURSE (KDOT)

## PART 1 GENERAL

## 1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation only.

## KANSAS DEPARTMENT OF TRANSPORTATION (KDOT)

KDOT Standard Specifications for State Road and Bridge Construction (1990)

## AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)

ASTM D 1188	(1996) Bulk Specific Gravity and Density of Compacted Bituminous Mixtures Using Paraffin-Coated Specimens
ASTM D 2726	(1996a) Bulk Specific Gravity and Density of Compacted Bituminous Mixtures Using Saturated Surface-Dry Specimens
ASTM D 2950	(1991) Density of Bituminous Concrete in Place by Nuclear Method

## 1.2 SAMPLING AND TESTING

Sampling and testing shall be the responsibility of the Contractor. Sampling and testing shall be performed by an approved commercial testing laboratory or by the Contractor subject to approval. Unless otherwise specified, sampling and testing shall be in accordance with KDOT Specifications for bituminous material. Copies of test results shall be furnished to the Contracting Officer. Approval of a source does not relieve the Contractor of responsibility for delivery at the job site of materials meeting the requirements herein. Required tests and test frequencies of test standards shall be as follows:

## 1.2.1 Hot bin gradations (cold-feed gradation when drum mix plant is used):

One test per 400 tons of mix or fraction thereof (at least one test per day).

## 1.2.2 Marshall Specimens

Two sets (three specimens per set) per day and/or at least one set per each 400 tons of mix placed (at least one set per day).

## 1.2.3 Asphalt Extraction

One test per 400 tons of mix (at least one test per day).

#### 1.2.4 Field and Lab Density Tests

One lab density set per 400 tons of mix or fraction thereof (three specimens per set). One field density set every 1000 square feet or fraction thereof (three specimens per set) (at least 1 set per day). Field density of compacted bituminous pavement shall be determined by ASTM D 2950, ASTM D 1188, or ASTM D 2726. If ASTM D 2950 is used, field density shall be checked by ASTM D 1188 or ASTM D 2726 once per 8 ASTM D 2950 tests.

#### 1.2.5 Thickness Measurements

One measurement for each 1000 square feet or fraction there of (at least 1 measurement per day).

#### 1.3 ACCESS TO PLANT AND EQUIPMENT

The Contracting Officer shall have access at all times to all parts of the paving plant for checking adequacy of the equipment in use, inspecting operation of the plant, verifying weights, proportions, and character of materials, and checking temperatures maintained in preparation of the mixtures.

### PART 2 PRODUCTS

#### 2.1 HOT-MIX SURFACE COURSE

Bituminous hot-mix surface course shall conform to the requirements of the KDOT Standard Specifications for Section 605 Plant Mix Bituminous Mixture - Commercial Grade except as specified hereinafter.

##### 2.1.1 Asphalt Material

Asphalt material for the surface course shall be asphalt cement, Type AC-10, conforming to KDOT Standard Specifications Subsection 1201 Asphalt Cement and Cutback Asphalt. Asphalt material shall come from a source approved for use by the Kansas Department of Transportation.

##### 2.1.2 Paving Mixture Type

The paving mixture shall be Mix BM-2.

##### 2.1.3 Modifications to KDOT Standard Specifications

KDOT Specifications shall be modified as follows:

- (a) The Marshall stability shall be 500 pounds, minimum.
- (b) Mat and joint density shall be 94-98 percent of maximum theoretical specific gravity.
- (c) The measurement and payment paragraphs shall not apply

## 2.2 PROPORTIONING OF MIXTURE

### 2.2.1 Job Mix Formula(JMF)

The job mix formula shall be developed and submitted for approval. The following tolerances shall apply to the job mix formula.

#### JOB MIX FORMULA TOLERANCES (PERCENT)

Mineral -----	Tolerances Plus or Minus -----
Aggregate passing No. 4 or larger sieve	7
Aggregate passing No. 8, 16, 30, and 50 sieves	5
Aggregate passing No. 100 and 200 sieves	2
Bitumen	0.4

## PART 3 EXECUTION

### 3.1 CONSTRUCTION

Bituminous surface course shall be constructed in accordance with the procedures in KDOT Standard Specifications Section 607 Road Mix Bituminous Construction.